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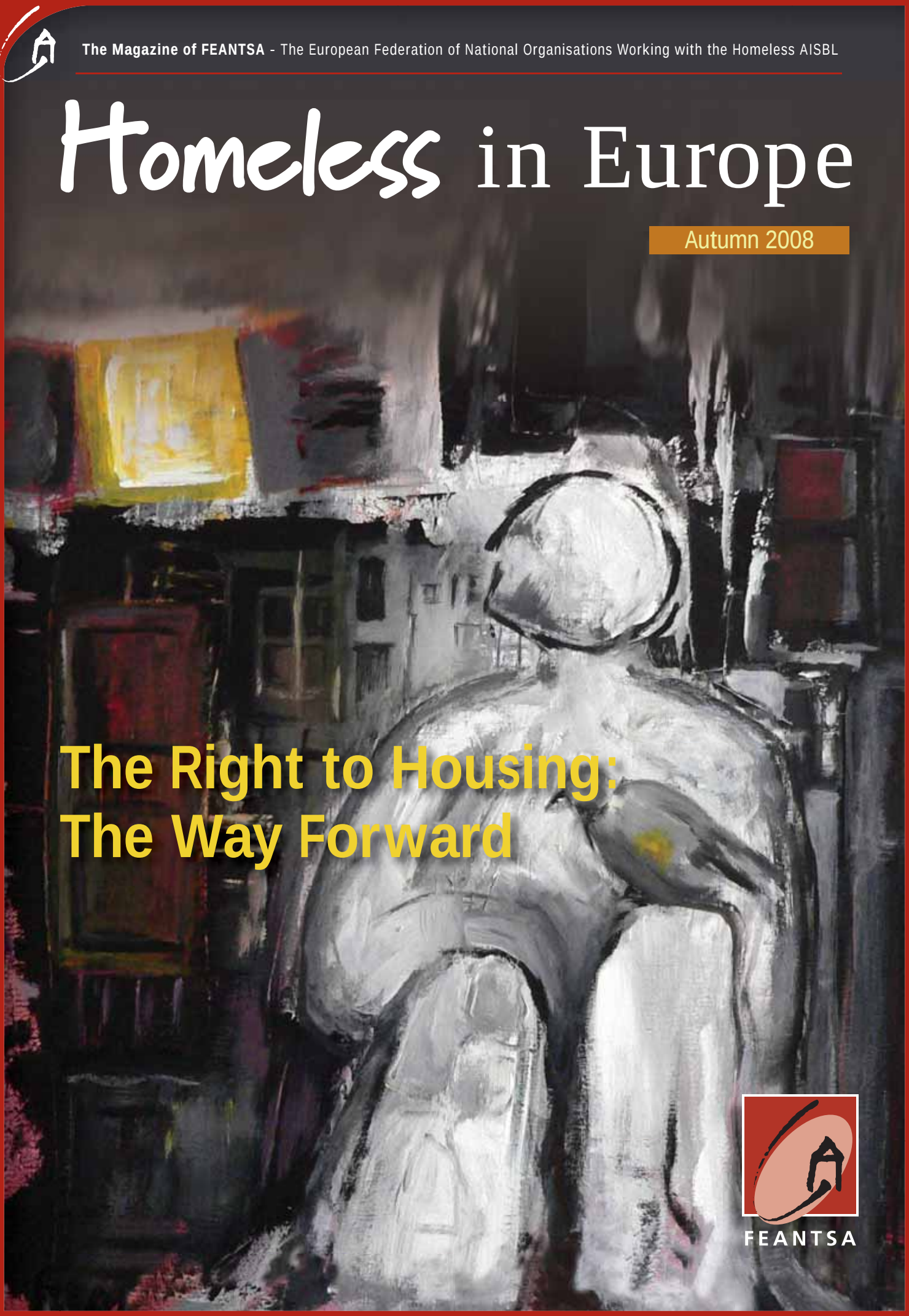

The Right to Housing: The Way Forward

FEANTSA

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LETTERS TO THE EDITOR

We would like to give you the chance to comment on any of the articles which have appeared in this issue. If you would like to share your ideas, thoughts and feedback, please send an email to charlotta.odlind@feantsa.org

The Right to Housing : The Way Forward

Access to adequate housing can be considered as being a precondition for the exercise of most other fundamental human rights. Having a secure, adequate and affordable place to live is essential to the achievement of a decent standard of living and to the fulfilment of human life beyond simple survival.

This edition of Homeless in Europe looks at the issue of the right to housing from a number of perspectives. The first part focuses on international human rights instruments, and examines what frameworks and mechanisms currently exist on the European and international level to safeguard and promote the right to housing. Dr Padraic Kenna, Lecturer in Law at the National University of Ireland, Galway, Thomas Hammarberg, Commissioner for Human Rights at the Council of Europe and Régis Brillat. Executive Secretary of the European Committee of Social Rights, Council of Europe, outline the roles of the EU, the UN and the Council of Europe in this context.

Marc Uhry and Dr Padraic Kenna shed light on how and why FEANTSA and ATD Quart-Monde used the Council of Europe collective complaint mechanism to show that France had failed to effectively implement the right to housing for all, and particularly for those most vulnerable. In their article they consider the implications of the decision issued by the European Committee of Social Rights for France and other Member States.

Ioannis Dimitrakopoulos, Head of Department Equality and Citizens Rights at the EU Fundamental Rights Agency (FRA) gives an overview of the work of the FRA and focuses specifically on those groups that are particularly vulnerable to housing discrimination, such as immigrants, undocumented migrants, asylum seekers and Roma.

The second part of this issue looks at the right to housing from a more philosophical perspective. Nicolas Bernard, Professor at the Facultés Universitaires St. Louis in Belgium, asks some fundamental questions as to what the 'right to housing' and 'decent housing' mean. He questions against whom the right to housing should be asserted, and asks whether right holders should also be duty bearers. Marc Uhry, who works for Alpil, takes on the subject of property, comparing the concept from common law and Roman law viewpoints and also highlights the problem that exists in translating, defining and understanding the terms of 'possessions', 'property' and 'ownership'.

The third part of the magazine looks at four national case studies. Tom Mullen, Professor of Law at the University of Glasgow, gives a summary of the rights for homeless people in Scotland and explains how the Scottish Homelessness Act of 2002 has helped reduce homelessness, while Bernard Lacharme, General Secretary at the HCLPD gives a progress report on the right to housing in France. This includes, of course, the first conclusions on the implementation of the DALO law, the enforceable right to housing, which came into effect on 1 January 2008. Jan-Erik Helenelund, Senior Researcher at the University of Vaasa and Peter Fredriksson, Senior Adviser, Ministry of the Environment in Finland, look respectively at the individual right to housing for homeless groups, and the preparation, funding and impact of the Homeless Strategy in Finland. This ambitious strategy aims to end long-term homelessness by 2015, and to phase out all night-shelters and hostels, so that temporary solutions to homelessness are fully replaced by permanent ones. And finally, Guillem Fernandez gives an overview of the housing situation in Spain, with reference to the report of the UN Special Rapporteur on adequate housing.

The final part of the issue looks at the power of networks, and how the bottom-up approach can work in the effective implementation of housing rights. Noria Derdek, Legal Officer at Fapil, explains how 'Jurislogement', a multidisciplinary network promoted by voluntary organisation lawyers can improve awareness and knowledge about the legal provisions applicable to housing issues and can support the development of case law to assert housing as a human right.

FEANTSA and its member organisations have long been advocating for housing rights,[1] and promote a rights-based approach to tackling homelessness. Its housing rights expert group brings together experts from several EU countries and has in the last few years been involved in a range of activities, such as: the publication of a book entitled "Housing Rights and Human Rights" (2005); the co-organisation of a Conference on Housing rights in Europe in Helsinki (2006); the lodging of a Collective complaint vs. France[2] for unsatisfactory application of Article 31 of the revised European Social Charter (2006); and the elaboration of a web site section on international housing rights instruments and mechanisms[3] (2007), including a database of Decisions of the European Court of Human Rights[4] relating to housing rights (2008). As part of its commitment to contribute to the further development of international standards, FEANTSA has also recently lodged a collective complaint against Slovenia, which focuses on the situation of tenants living in restituted dwellings.

FEANTSA will also be launching Housing Rights Watch this autumn, a European interdisciplinary network of housing and legal experts committed to promoting the right to housing, which will facilitate the exchange of information, in particular on relevant case-law at different levels. More details will be available from the FEANTSA website shortly.

FEANTSA would like to extend its sincere thanks and gratitude to all the contributors to this issue of the magazine.

1 For any information on housing rights within FEANTSA, contact stefania.delzotto@feantsa.org.
2 For more information, see : http://feantsa.horus.be/code/EN/pg.asp?Page=927
3 For more information, see : http://feantsa.horus.be/code/EN/pg.asp?Page=677
4 For more information, see : http://feantsa.horus.be/code/EN/pg.asp?Page=695

International Instruments on Housing Rights

By **Dr. Padraic Kenna**[1], *Lecturer in Law at National University of Ireland, Galway*

INTRODUCTION

Housing rights have taken on a new importance in recent years, giving a focus to housing policies and homelessness campaigning. These rights are acting increasingly as a countervailing force against neo-liberal housing policies. Housing rights are now viewed as an integral part of economic, social, and cultural rights within the UN,[2] European, Inter-American and African human rights instruments.[3] Clarification on the contents and obligations of housing rights, including the concepts of minimum core obligations and progressive realisation and violations of rights are now widely understood and accepted in the context of the right to an adequate standard of living.[4]

EUROPEAN UNION

In Europe, the inclusion of the right to housing assistance in the EU Charter of Fundamental Rights places housing rights alongside the freedom of movement of capital, labour and services and other market measures of the Union.[5] Article 34(3) of the Charter of Fundamental Rights states:

"In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the procedures laid down by Community law and national laws and practices."

Many other EU legal measures, such as consumer protection, are acting to strengthen housing rights.

UNITED NATIONS

The *Universal Declaration of Human Rights* (UDHR)[6] recognises rights to housing in Article 25, which states that;

"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

Similarly, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), of 1966, now ratified by almost all States (though not the U.S.), recognises the right to housing.[7]

"The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. "

Ratifying States are required to recognise these housing rights, meet "minimum core" obligations, ensure non-discrimination and enact legislative measures and appropriate policies geared to a progressive realisation of these rights.[8] *General Comment No. 4. on the Right to Adequate Housing* sets out the minimum core guarantees which, under public international law, are legally vested in all persons.[9] *General Comment No. 7* on *The Rights to Adequate Housing – forced eviction* seeks to prohibit forced evictions which result in individuals being rendered homeless or vulnerable to the violation of other human rights.[10]

Other UN *General Comments* refer to housing rights in the context of people with disabilities, older people, health rights and other areas.[11] Further relevant UN instruments include the UN *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW),[12] the *Convention on the Rights of the Child*,[13] the *UN Global Strategy for Shelter to the Year 2000*[14] and the *UN Convention Relating to the Status*

1 Email: padraic.kenna@nuigalway.ie

2 Craven, M. (1995) *The International Covenant on Economic, Social and Cultural Rights* (Oxford: Clarendon Press); Eide, A. et al. (ed.), (2001) *Economic, Social and Cultural Rights – a Textbook*. (2nd ed.) Dordrecht: Martinus Nijhoff Publishers.

3 UN-HABITAT. (2002) *International Instruments on Housing Rights*. Available at http://www.unhabitat.org/pmss/getPage.asp?page=bookView&book=1281

4 See UN Doc. E/CN.4/2005/48. *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, (Miloon Kothari) to the UN Commission on Human Rights, March 3, 2005.

5 Now included in the *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community. Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the treaty of Lisbon, signed on 13 December 2007.*

6 *Universal Declaration of Human Rights,* UNGA Resolution 2200A (XX1) UN Doc A/810. Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

7 For details of ratifications see websites: http://www.unhchr.ch/html/menu3/b/a_cescr.htm and http://www.unhchr.ch/pdf/report.pdf

8 ICESCR Covenant Art 2. See also Alston, P. & Quinn, G. 'The Nature and Scope of States Parties Obligations under ICESCR,' 9 *HRQ* 156-229 (1987).

9 See UN Doc.E/1991/23. (1991) UNCESCR. *General Comment No. 4. The Human Right to Adequate Housing.* These are legal security of tenure, availability of services, materials and infrastructure, affordable housing, habitable housing, accessible housing, housing in a suitable location, housing constructed and sited in a way which as culturally adequate.

10 UN Doc. E/1998/22 Annex IV.

11 See *General Comment No. 5*, on persons with disabilities - UN Doc. E/1995/22; *General Comment No. 6*, on the economic, social and cultural rights of older people - UN Doc. E/1996/22; *General Comment No. 14,* on the right to the highest attainable standard of health - UN Doc. E/C.12/2000/4. See also UN *Convention on the Rights of Persons with Disabilities*. *Article 28 - Adequate standard of living and social protection.* Available at http://www.un.org/disabilities/convention/conventionfull.shtml

12 UN *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW). Resolution 34/180 of 18 December 1979.

13 Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entered into force 2 September 1990.

14 Adopted by the UN General Assembly in resolution 43/181 on 20 December 1988.

15 *Convention relating to the Status of Refugees*, Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950 entered into force 22 April 1954, in accordance with Article 43, as amended by the New York Protocol of 31 January 1967.

of Refugees (1951), and its Protocol.[15] Many other international instruments setting out rights to housing have been ratified by countries around the world.[16]

COUNCIL OF EUROPE

The Council of Europe promotes housing rights through the European Social Charter and Revised Charter (RESC), in an oblique way through the European Convention on Human Rights, and in other ways.[17] The *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR)[18] contains many civil and political rights provisions which are being interpreted in the development of housing rights across Europe, especially within Articles 3, 6, 8, 13, 14 and Article 1 of Protocol No. 1., both at the Strasbourg court level and at the level of national courts where the Convention has been incorporated into national law.[19] Positive obligations on States are being established in this Court, especially in relation to vulnerable persons who cannot assert rights themselves, although many cases fail to reach the court.[20] However, there are good examples of Articles 3 and 8 being used to enforce the positive obligations of States towards homeless people.

The European Social Charter and RESC[21] contain important rights to social and medical assistance for those without adequate resources, establishing housing obligations in relation to physically and mentally disabled persons, children and young persons, and rights to social, legal and economic protection for families, including a State obligation to provide family housing. The Social Charter grants migrant workers an explicit right to be treated equally in relation to access to housing, and sets out the right of elderly persons to social protection and independent living by means of provision of housing suited to their needs and their state of health, or of adequate support for adapting their housing. Article 30 of the RESC, on rights to protection against poverty and social exclusion, includes an obligation on Contracting States to promote effective access to a range of services, including housing. Part V of Article E of the Charter states: "*The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.*" Article 31 of the RESC establishes a right to housing:[22]

"With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. *to promote access to housing of an adequate standard;*
2. *to prevent and reduce homelessness with a view to its gradual elimination;*
3. *to make the price of housing accessible to those without adequate resources.*[23]"

The most significant clarification of the obligations arising from this Article relates to the Collective Complaint of *FEANTSA v. France*.[24] This case was brought by the FEANTSA Expert Group on Housing Rights, which has been promoting awareness of housing rights in relation to homelessness across Europe for almost five years. This Decision established, among other things, that recognition of the obligations under Article 31, while not imposing an obligation of "results," must take "a practical and effective, rather than purely theoretical form".[25]

16 For a fuller compilation of these instruments see for instance: Leckie, S. (2000) *Legal Resources for Housing Rights*. Geneva: COHRE; UN-HABITAT. (2002) International Instruments on Housing Rights. Available at http://www.unhabitat.org/pmss/getPage.asp?page=bookView&book=1281; Leckie, (ed.) (2003) *National Perspectives on Housing Rights*. The Hague: Martinus Nijhoff; UNCHS, *Housing rights legislation: Review of international and national legal instruments*: available at www.unhabitat.org/programmes/housingrights/ ; Kenna, P. (2005) *Housing Rights and Human Rights*. Brussels: FEANTSA.

17 There are many political statements from the Committee of Ministers of the Council of Europe. See *Recommendation R (2000) 3, on the right to satisfaction of basic material needs of persons in situations of extreme hardship. See also* Europe Commissioner for Human Rights, Issue Paper – *Housing Rights: The Duty to Ensure Housing for All.* CommDH/IssuePaper(2008)1 Strasbourg, 25 April 2008. Available at: https://wcd.coe.int/ViewDoc.jsp?id=1292391&Site=CommDH

18 See website: http://conventions.coe.int/treaty/en/Treaties/Html/005.htm

19 See *Connors v. UK*. ECtHR Judgment 27 May 2004. (Application no. 66746/01); *Chapman v. UK (2001)* 33 EHRR 413*; Beard v. UK* (2001) 33 EHRR 442; *Regina v. Secretary of State for the Home Department (Appellant) ex parte Adam (FC) (Respondent) and Others. (Conjoined Appeals)* [2005] UKHL 66; *Moldovan and Others v. Romania* Judgement 12 July 2005. (Applications 41138/98 and 64320/01); *Marzari v. Italy* (1999) 28 EHRR CD 175; *Botta v. Italy* (1998) 26 EHRR 241; *Lopez-Ostra v Spain* (1991) 14 EHRR 319; *Geurra v Italy* (1998) EHRR 357.

20 See Kenna, P. "Housing Rights: Positive Duties and Enforceable Rights at the European Court of Human Rights", *European Human Rights Law Review*, 2: 2008.

21 *European Social Charter. (Revised*) Council of Europe, Strasbourg 3/5/1996. The binding nature at national level of the Charters depends on whether a dualist of monist legal systems pertains, but many States have incorporated the Charter (or parts of it) into national law. See website: http://conventions.coe.int/treaty/en/Treaties/Html/005.htm

22 For a detailed examination of these obligations see Council of Europe, European Committee on Social Rights, European Social Charter (revised) *Conclusions 2003 – Volume 1 (Bulgaria, France, Italy); Conclusions 2003 – Volume 2 (Romania, Slovenia, Sweden)*. Strasbourg: Council of Europe Publishing, October 2003.

23 States which had accepted Article 31 in full or in part in October 2007 were Andorra, Finland, France, Italy, Lithuania, Netherlands, Norway, Portugal, Slovenia, Sweden and Ukraine. See website: http://www.coe.int/t/e/human_rights/esc/1_general_presentation/Provisions_en.pdf

24 Complaint No. 39/2006.

25 Complaint No. 39/2006. para. 55.

Social rights and the implementation of housing rights

By **Thomas Hammarberg**[1], *Council of Europe Commissioner for Human Rights*

Ever since President Franklin D. Roosevelt used the term "Freedom from Want" in his famous speech of 1941 on the four freedoms, there have been constructive efforts to formulate certain economic and social rights which would apply to everyone. The right to education, healthcare, an adequate standard of living and reasonable conditions of work were already included in the Universal Declaration of Human Rights in 1948 alongside principles such as those of freedom of the press and protection against torture.

However, in human rights treaties there has been a tendency to divide civil and political rights on one side and economic and social rights on the other. Also, within the United Nations the rights are codified in two different covenants. There were political reasons for this division. After the cold war in 1993, the World Conference on Human Rights in Vienna explicitly declared the principle that both socio-economic rights and civil and political rights are "*universal, indivisible, interdependent and interrelated*". This means that socio-economic rights should enjoy the same protection by states as that accorded to civil and political rights.

Experience has demonstrated that this indivisibility of rights is more than theory. Political and civil rights can hardly be exercised by people who are denied basic economic and social rights. If people are forced to spend all their time trying to find ways to survive, they are in reality prevented from taking part in public life.

The earlier confusion is part of the explanation why the Council of Europe adopted two separate treaties: the European Convention on Human Rights for civil and political rights and the European Social Charter for social and economic rights. However, the interrelationship between the two has been recognised by their control mechanisms, and they both underline the indivisibility of different human rights. The European Court of Human Rights declared very early in its case law that there is no watertight division separating the sphere of social rights from the field covered by the European Convention on Human Rights. The European Committee of Social Rights has affirmed that the Social Charter complements the European Convention on Human Rights and that the rights guaranteed by the Charter are not ends in themselves but complement the rights of the Convention.

The implementation of the same standards of social rights throughout Europe is fostered by another important instrument: Protocol No. 12 to the European Convention on Human Rights. It builds the formal bridge between the Social Charter and the European Convention. The general prohibition of discrimination makes social rights officially enter the scope of the Convention and thereby come under the jurisdiction of the European Court. As only 17 Council of Europe member states have so far ratified the Protocol further ratifications are needed.

Housing rights are now viewed as an integral part of economic, social, and cultural rights within the international human rights instruments. The UN Committee on Economic, Social and Cultural Rights (CESCR) and the European Committee on Social Rights have clarified the contents, standards and obligations within housing rights. These include the concepts of minimum core obligations and progressive realisation of rights according to available resources in the context of the right to an adequate standard of living. Any retrogression in housing rights would constitute a human rights violation. The fact that housing has increasingly been privatized and thereby made subject to market forces does not mean that governments have been relieved from their obligation to protect the rights of the individuals. The first step is to recognize that adequate housing is indeed a universal human right.

The *International Covenant on Economic, Social and Cultural Rights* (ICESCR, 1966) states: "*The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*" *General Comment No. 4. on the Right to Adequate Housing,* issued by CESCR, sets out the minimum core guarantees which, under public international law, are legally vested in all persons. These are legal security of tenure, availability of services, materials and infrastructure, affordable housing, habitable housing, accessible housing, housing in a suitable location, housing constructed and sited in a way which is culturally adequate.

In the Revised European Social Charter (1996), Article 30 on the right to protection against poverty and social exclusion includes an obligation to promote effective access to a range of services, including housing. Article 31 establishes a right to housing, with Contracting States undertaking to take measures designed to promote access to housing of an adequate standard, to prevent and reduce homelessness with a view to its gradual elimination, and to make the price of housing accessible to those without adequate resources.
The *Limburg Principles* (1986) and the *Maastricht Guidelines* (1997) have defined further the requirements of effective implementation of socio-economic rights, such as housing rights, and the nature and appropriate remedies for violations. The *Limburg Principles* emphasize that the obligation under the *International Covenant on Economic, Social and Cultural Rights* "to achieve progressively the full realization of the rights" requires States Parties to move as expeditiously as possible towards the realization of these rights.

Housing rights are now viewed as an integral part of economic, social, and cultural rights within the international human rights instruments.

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Article 11 of the *Maastricht Guidelines* states that a violation of economic, social and cultural rights occurs when a state pursues, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant, or fails to achieve the required standard of conduct or result. Furthermore, any discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights constitutes a violation of the Covenant. Violations of these rights can occur through the direct action of states, or other entities insufficiently regulated by states, or through the omission or failure of states to take necessary measures stemming from legal obligations.

The obligations assumed by states in relation to housing rights are of several types. Firstly, some are obligations to refrain from interfering with liberties, opportunities or possessions. The right to peaceful enjoyment of possessions means that states may not interfere with private property without justification. Secondly, others are obligations to secure rights against invasion by other individuals or groups. The right to peaceful enjoyment of possessions also requires that individuals are not subject to invasion of their property rights by other individuals. Thirdly, states may have positive obligations to take appropriate legislative, budgetary and other measures in order to achieve appropriate housing outcomes. Satisfaction of such obligations may require states to provide material assistance to persons or take other steps necessary to ensure that persons enjoy a certain level of material provision - broadly that they have housing of adequate quality. These three types of obligation are sometimes referred to as obligations to respect, protect and fulfill.

The obligations undertaken by states may be satisfied in a variety of ways. The obligation to respect can be met by the state refraining from interfering with the freedom or possessions of the individual. However, it is unlikely that illegitimate state interference will never occur. Therefore, in order to respect rights in the fullest sense, states must provide remedies for invasion of rights by organs of the state and those claiming to wield the authority of the state.

The obligation to protect arises from the possibility of interference with freedom or possessions of the individual by private parties and requires the state both to take preventative measures and to provide remedies for invasions of rights when they actually occur. Preventative measures will most obviously include the traditional policing function, but may also include action by regulatory bodies designed to detect and deter violation of rights.

Therefore, the obligation to respect and the obligation to protect imply not only a certain substantive content of domestic law (for example, rights must be recognized in law), but also require the establishment and maintenance of certain sorts of institutions and machinery including police, administrative and judicial bodies, and the allocation of adequate resources to those institutions.

The positive obligations (obligation to fulfill) undertaken by states in terms of the ICESCR and the Revised European Social Charter generally place much greater demands on them than the obligations to respect and protect and include appropriate legislative, budgetary and other measures to ensure that appropriate housing outcomes are achieved. Although it is clear, as stated above, that both the obligation to respect and the obligation to protect 'non-interference' have implications for the allocation of scarce resources, the resource implications of the obligation to fulfill tend to be more far-reaching. For this reason the rights are expressed in such a way as to make it clear these obligations are, in principle, obligations of means rather than of results. States are obliged to make the full realization of the rights concerned the aim of their policy, to work towards their progressive realization and to do so by all appropriate means.

The precise methods to be adopted for giving effect to them are matters for each state to decide. However, states do not have complete freedom in this regard. The means chosen must be adequate to ensure that states do give effect to their obligations. The realization of rights cannot be postponed indefinitely, and the concept of progressive realization of rights implies that states should not in general adopt legislative and policy measures which result in a worsening of the housing conditions of persons within their jurisdiction. Whilst economic factors, including externally imposed constraints may limit the ability of states to achieve housing rights objectives, the obligations continue to apply, and arguably have particular importance, even during times of economic contraction. In practice, moving towards the full realization of rights will require the adoption of a national housing strategy which incorporates targets to be achieved and effective monitoring of the situation with respect to housing rights. Housing rights should also be made justiciable before courts or other mechanisms in order to ensure their individual enforceability.

The effective implementation of the right to housing of homeless or poorly housed persons: the role of the European Social Charter

By **Régis Brillat**[1], *Executive Secretary of the European Committee of Social Rights – Council of Europe*

In December 2007, the European Committee of Social Rights took two decisions in the collective complaints lodged against France, one by the "Mouvement international ATD Quart Monde" and the other by FEANTSA. These decisions were made public four months after they were notified, i.e. on 5 June 2008.[2]

Article 31, which enshrines the right to housing, was introduced in the revised version of the European Social Charter adopted in 1996, and a procedure for collective complaints was introduced in 1995, under the same Charter, which entered into force three years later, come to mind.[3]

To understand the role the Social Charter can play in the effective implementation of the right to housing of homeless and poorly housed people, it is necessary to examine first the definition of the rights guaranteed by the Charter, and then the procedures for compliance with the treaty.

1. DEFINITION OF THE RIGHTS ON HOUSING GUARANTEED BY THE SOCIAL CHARTER

The right to housing as affirmed in Article 31, part I of the Revised Social Charter is defined in part II, which itemises three series of commitments by States concerning: the quality of housing; the quantity of housing and measures for homeless people; and the cost of housing.

It is the European Committee of Social Rights,[4] the monitoring body of the Charter that defines the contents and scope of the rights set out in these texts progressively.

Article 31 of the Revised Social Charter had already led to case law by the Committee in two different ways. First, several complaints had dealt with the question of the right to housing as regards more specifically the rights of the Roma. Second, in connection with the reporting procedure, the Committee had clarified a certain number of concepts and had defined the different scopes of paragraphs 1, 2 and 3 of Article 31.

Yet on the occasion of these two complaints mentioned above, the Committee was for the first time called upon to decide on a whole series of questions covering the scope of material application of Article 31 in a quasi exhaustive manner. In other words, people were expecting these decisions to be made, and it was hoped that they would outline the main principles of interpreting Article 31 to guide the effective implementation of the right to housing in Europe.

What are the main lessons to be drawn from these decisions?

First of all, the Committee has continued to affirm the general principles of interpreting the European Social Charter that it had defined chiefly under the procedure for collective complaints, but also under the national reporting system:

- The Charter guarantees practical and effective rights, not theoretical and illusory ones: this statement is identical to that of the European Court of Human Rights as regards the European Convention on Human Rights and it indicates unequivocally the relationship between the two treaties;

- The classic distinction between obligations of means and obligations of results is not a satisfactory interpretation framework for understanding the Charter: this treaty fixes no obligation of result, certainly not on the right to housing any more than on the other rights guaranteed by the Charter; the fact remains, nonetheless, that taking a large number of measures and allocating sizeable means and resources to achieving the objectives of the treaty do not suffice to comply with it when it becomes flagrantly apparent that certain individuals, groups or categories of the population do not actually benefit from the rights that the Charter recognises for them.

- Finally, it is not up to the Committee to tell States which precise measures have to be taken: the Charter is a treaty on human rights, it is not an instrument for harmonisation nor a tool for coordinating social policies; the States have some leeway to decide on the type of measures they intend to take to ensure the effective guarantee of the human rights that they have undertaken to respect by ratifying the treaty and to ensure their implementation.

Secondly, the Committee has indicated with precision the general framework for the effective implementation of Article 31:[5]

"55. (…) The Committee agrees that the actual wording of Article 31 of the Charter cannot be interpreted as imposing on states an obligation of "results." However, it notes that the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical form.

56. This means that, for the situation to be compatible with the treaty, states party must:

a) adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
b) maintain meaningful statistics on needs, resources and results;

1 Email: social.charter@coe.int

2 Link to the European Social Charter web site, which includes information on collective complaints: http://www.coe.int/t/dghl/monitoring/socialcharter/default_en.asp.

3 The text of the treaties is available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/TreatiesIndex_en.asp.

4 Jean-Michel Belorgey, "La Charte sociale européenne et son organe de régulation le Comité européen des Droits sociaux," Revue de Droit Sanitaire et Social, N° 2, March-April 2007, pp. 227-248.

5 FEANTSA v. France, Complaint n° 39/2006, decision on the merits of 5 December 2007, §§ 55-58 and 62-63,

c) undertake regular review of the impact of the strategies adopted;
d) establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;
e) pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.

57. In connection with means of ensuring steady progress towards achieving the goals laid down by the Charter, the Committee wishes to emphasise that implementation of the Charter requires state parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein.

58. When one of the rights in question is exceptionally complex and particularly expensive to implement, states party must take steps to achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources (Autisme Europe v. France, Complaint n° 13/2002, decision on the merits of 4 November 2003, .§53).

62. In connection with timetabling – with which other regulatory bodies of international instruments are also very concerned – it is essential for reasonable deadlines to be set that take account not only of administrative constraints but also of the needs of groups that fall into the urgent category. At all events, achievement of the goals that the authorities have set themselves cannot be deferred indefinitely.

63. The authorities must also pay particular attention to the impact of their policy choices on the most vulnerable groups, in this case individuals and families suffering exclusion and poverty (Autisme Europe v. France, Complaint n° 13/2002, decision on the merits of 4 November 2003, §53). »

In applying all these principles to the situation in France, the Committee concluded that the situation was not in conformity with the Social Charter for the following reasons:

- Insufficient progress as regards the eradication of substandard housing and lack of proper amenities of a large number of households; (article 31§1);
- Unsatisfactory implementation of the legislation on the prevention of evictions and the lack of measures to provide rehousing solutions for evicted families (article 31§2);
- The measures currently in place to reduce the number of homeless are insufficient, both in quantitative and qualitative terms (article 31§2);
- Insufficient supply of social housing accessible to low-income groups (article 31§3);
- Malfunctioning of the social housing allocation system and the related remedies (article 31§3);
- Deficient implementation of legislation on stopping places for travellers (article 31§3 taken in conjunction with article E).

Finally, it is necessary to point out that the Committee has also recorded a violation of Article 30 (the right to protection against poverty and social exclusion), that was also cited by the 'Mouvement International ATD quart-monde' in its complaint, because of the lack of a coordinated approach to promote effective access to housing for people who are or could find themselves in a situation of social exclusion or poverty.

2. BRINGING NATIONAL SITUATIONS IN LINE WITH THE CHARTER

When the European Committee of Social Rights concludes that the situation in a state is not in conformity with the Charter, it is up to the state concerned to take such measures as necessary to put an end to the violation. In the case at hand, the right to housing of the homeless or poorly housed people must be implemented in an effective manner.

What have been, are or will be the consequences of these decisions?

The first point to make is the decisions were widely spread through the media in France, where the European Committee of Social Rights now occupies a significant place on the human rights landscape.

It is undeniable that even before the decisions, significant changes on housing had taken place, in particular the adoption of the enforceable right to housing.[6]

The Committee of Ministers of the Council of Europe is in charge of monitoring the decisions of non-conformity taken by the European Committee of Social Rights, and in particular of ascertaining that states take appropriate measures to conform with the Charter and recommending them to do so if they do not do it of their own accord.

It has obviously noted the changes in French legislation and in the housing measures taken recently. Furthermore, it has noted the commitment of the French authorities to bring their situation in line with the Social Charter.[7]

The decisive question in this regard will be the way in which the principles enunciated by the European Committee of Social Rights and reviewed above will be taken into account in the concrete, daily application of the new act.

In such a situation – and the same applies to all states that have accepted the collective complaint procedure – the organisations that have lodged complaints have a decisive role to play in disseminating the Committee's decisions among national decision-makers, as well as among the courts and the general public.

It therefore makes sense to state that, far from putting an end to the question of effective access by all to the right of housing, these decisions are a new point of departure to mobilise all actors.

It is by referring constantly to the principles enunciated by the European Committee of Social Rights during consultations on the adoption of new legal standards or on their implementation, by contesting decisions that would seem to run contrary to these principles, and by calling on judges to refer to these principles when settling disputes referred to them, that the effective right to housing will make headway.

The European Committee of Social Rights will be attentive to ensure that the interpretation principles it has defined constitute a framework for action by the states party to guarantee the effective right to housing, both when examining the upcoming reports from France and other states that have accepted Article 31 and in the event of new collective complaints about this provision.

The organisations that have lodged complaints have a decisive role to play in disseminating the Committee's decisions among national decision-makers, as well as among the courts and the general public.

6 The enforceable right to housing, n° 2007-290 of 5 March 2007 (known as the "DALO" law).
7 ResChS Resolution (2008/8) adopted by the Committee of Ministers on 2 July 2008.

France violates Council of Europe right to housing

By **Dr. Padraic Kenna** [1], National University of Ireland, Galway, and **Marc Uhry** [2], Alpil, Lyon, France

On 5 June 2008, the Council of Europe Committee of Social Rights concluded that France had violated the right to housing. This decision came after two legal actions taken in parallel by ATD Quart-Monde and FEANTSA.[3] The full scope of this verdict can be measured only through an understanding of the judicial framework established by the Council of Europe, the meaning of steps taken by NGOs, and the detailed contents of the decision.

THE JUDICIAL FRAMEWORK: THE REVISED SOCIAL CHARTER OF 1996

France was found in violation of Article 31 of the Revised European Social Charter which specifies:

"With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1 *to promote access to housing of an adequate standard;*
2 *to prevent and reduce homelessness with a view to its gradual elimination;*
3 *to make the price of housing accessible to those without adequate resources."*[4]

In France, which is a one-tier state, this Charter stands at the apex in the hierarchy of laws and regulations; internal law must therefore comply with it. However, to date, the international framework relating to social rights has not been perceived as very onerous.

The monitoring system introduced around the Revised Social Charter (regular country assessments and a system of direct complaints to the monitoring body - "collective complaints") is, to our knowledge, the most effective human rights assessment of the quality of public policies with regard to progress on social rights. The adjudication process allows for an open debate where both complainant and State are represented. This examines policy ambitions, legislation, budgetary measures, institutional and other measures, to assess progress towards realization of the rights involved. Through these mechanisms, the Council of Europe provides a common legal terminology, which stems from recognised social rights, on which it will be possible to gradually base a civil debate, and consequent rights based public policies.

The decisions taken constitute an international case law that marks out the landscape and contribute to the establishment of a social safety valve, at both European and local level. This can provide a template and balance to the various political orientations which are at times not very concerned about their collateral effects.

NGOS' APPROACH: EXAMINING THE LINK BETWEEN SOCIAL RIGHTS AND PUBLIC POLICIES

Why did NGOs, which are used to political dialogue with the public authorities, decide to simultaneously opt for international judicial proceedings? First, this was a fundamental way to broach the question of social exclusion in terms of law. People in dire need of housing are not passive objects of public policies, but citizens whose rights are denied and who are not begging for a service.

The switchover from a rationale of services to a rationale of rights tips the balance from interpreting State human rights obligations as obligations of means (often involving some or little legislation, budgetary measures and symbolic policies), to the obligation of results. At issue is establishing a right, deemed aspirational, but now gradually becoming enforceable as an individual right, so as to advance change in public policies.

Furthermore, this procedure is a means for assessing public policies. France has an ambitious body of legislation on paper, but reaches poor results in policies aimed to improve situations. It spends €32 billion every year on housing policies, or the equivalent of €10,000 per poorly housed person, without making any progress on inadequate housing in ten years. This paradoxical situation often overwhelms or suppresses the civil dialogue on this issue through comical repetition of policies, budgets, laws and voluminous other information. The NGO sector is constantly raising the seriousness of the situation, while public authorities underscore the scope of the efforts made.

To get beyond a hackneyed dialogue on the pertinence of public commitments, FEANTSA chose the judicial path where the arguments of the two sides can be opposed, in order to recast the civil dialogue on the basis of an objectified diagnosis. This litigious approach was not meant to be aggressive, and if a country with weighty policies was chosen, it is because the role of the decision is first and foremost to structure international standards on the quality of public policies. Where France is not performing well, countries with lesser results are also lacking. This is a top-down harmonisation process.

Furthermore, France is part of a few big countries that help set the example for some public intervention, the use of which is problematic. For example, *social mix*, which is recommended in the laudable objective to avoid the concentration of poverty and suffering, is regularly questioned as a means of discrimination. It was therefore important to have a jurisprudential definition of the scope of a concept such as social mix.

1 Former Chair of FEANTSA's expert group on the right to housing
2 Present Chair of FEANTSA's expert group on the right to housing
3 For more information on the legal action taken by FEANTSA, see http://feantsa.horus.be/code/EN/pg.asp?Page=927
4 States which had accepted Article 31 in full or in part at October 2007 were Andorra, Finland, France, Italy, Lithuania, Netherlands, Norway, Portugal, Slovenia, Sweden and Ukraine. See website: http://www.coe.int/t/e/human_rights/esc/1_general_presentation/Provisions_en.pdf

The State stands as the ultimate guarantor of international housing rights obligations. The territorial equality of access to social rights is not only a political responsibility of the State; it is also a judicial responsibility with regard to international law.

What is at stake is the introduction of a culture of individual rights entailing an obligation to achieve results. This must lead to constant monitoring of the choices made, from the structural foundations of public interventions, to the details of the services offered (including by the associations).

MAIN CONCLUSIONS

The Committee of Social Rights concluded unanimously that each of the three paragraphs of Article 31 has been violated. It has endeavoured to word its decision in easily transferable terms (see Régis Brillat's article in this magazine.) Several points of legal doctrine are elucidated in its conclusions, and we shall here focus below on the ones with the most pertinent implications.

This decision clarifies first a key question: the objective of full implementation of rights is the ultimate assessment grid for public policies. It is not simply enough to describe the efforts made, without and evaluation of the outcomes. Yet the Revised Social Charter does not ask States to meet their requirements flawlessly or immediately. Indeed, in the Collective Complaints there was a clear difference in approach between the NGOs, which were pleading for an obligation of results, and the French government, which was taking refuge behind the obligation of means. However, the Committee of Social Rights has introduced positive obligations connected to the obligation of means, involving the establishment of a baseline of actions and subsequent examination of progressive realization of rights from that point.

Next, the approach to substandard housing clarifies the commitment of the States to enforce compliance (and not merely comply themselves) with the provisions of the revised Social Charter. The State has an obligation of planning. The decision points to: "*an absence for a considerable period of time of a systematic scheme ..] [The Committee] therefore considers that the measures taken by the authorities to eradicate the problem of substandard housing remain insufficient.*"

The State stands as the ultimate guarantor of international housing rights obligations. The territorial equality of access to social rights is not only a political responsibility of the State; it is also a judicial responsibility with regard to international law. It is a judicial contribution, which is useful for the litigant. In specific situations characterised by difficulties to exercise social rights, the responsibilities of landlords, local authorities, regional and national level are not clearly established, and this paralyses decision-making and even legal remedies. The conclusion can be drawn from this decision that the State is at least responsible for not having organised a fully functioning system and it is up to the State to find other responsible parties where required.

The Committee of Social Rights specified that "*inefficacy of means of redress, which most often result in a compensatory payment or reduction in rent*" is not an appropriate response to address problems of substandard housing. Legal proceedings that ensure the full exercise of social rights must be concluded with redress, a restoration of the right, and not simply compensation of the lack of effectiveness of the rights.

As regards evictions of tenants, the Committee confirms the obligation of re-housing: "*the Committee considers that the lack of guarantees ensuring stable and accessible re-housing options before eviction takes place amounts to a breach of Article 31.2*" This approach falls under a far broader discussion conducted on a European scale on the links and conflicts between housing and the right of ownership. The Committee goes into the details that contribute to this violation, bringing to question "*financial measures to prevent eviction*" as well as "*the loose coordination among all actors involved in the prevention procedure.*" That said, the Committee specifies that the obligation of the States is not limited to taking corrective measures in situations of poor housing, but bears a positive responsibility to anticipate and prevent difficulties in exercising the right to housing.

Emergency accommodation is also a complex political problem, the stakes of which are clarified in the Decision. It is always tempting to resort to hasty answers when faced with dire need. The Committee points out as much: the poor quality of the data available "*is a fundamental shortcoming which prevents the authorities from determining the adequacy of the measures taken to reduce homelessness.*" In spite of these insufficient data, the Committee notes that "*the lack of places in facilities for the homeless [...] illustrates the underlying failure of the government's policy in this field and shows that the situation is not compliant with the provisions of the revised Charter.*" In so doing, the Committee illustrates the need to go beyond the rationale of obligation of means mentioned above. The Committee pointed out: "*there is too much of a fallback on makeshift or transitional forms of accommodation which are inadequate both in quantitative and qualitative terms, and which offer no definite prospect of access to normal housing.*"

The Council of Europe also outlines a definition of social housing, which seems most appropriate in a period characterised by the discussions between the States and the European Commission on the reasons for protecting a particular sector. First, the Committee points to the production of social housing, which targets insufficiently the more pressing social needs. Also, "*There would also appear to be no clear policy mechanism in place to ensure that due priority is given to the provision of housing for the most deprived members of the community, and that the assess-*

ment of the needs of the most deprived is built into the programme of providing social housing" [...] the Committee considers that the implementation of this policy [of social housing for a large segment of the population] does not by itself constitute a sufficient step or a sufficient justification for the ongoing manifest inadequacy of the existing policy mechanisms for ensuring due priority for the provision of social housing for the most socially deprived. The situation therefore constitutes a violation of Article 3§.3."

Behind the example of social housing, all the redistribution policies are questioned. Should the social redistribution of tax revenue aim, as a matter of priority, to reduce inequalities? Or can it be more blind for the sake of universal stakes (urban planning, territorial economic development, etc.)? Through social housing, the Committee of Social Rights organises the priority of intervention paradigms: first, to ensure the rights; the other objectives are subsidiary. Public policies must first and foremost ensure that social inequalities do not lead to a denial of the effective exercise of social rights; therefore social policies should be geared to priority needs.

This criticism of the social housing production system is contained also in the denunciation of the attribution mechanisms: the waiting period is too long, the selection mechanisms discriminate the most pressing needs – all through an "*attribution procedure [that] does not guarantee sufficient fairness and transparency." The concept of "social mix" as provided by the Act of 1998, which often is used as the basis for refusing social housing, often leads to discretionary results excluding the poor from access to social housing. The major problem stems from the unclear definition of this concept in law,and in particular, from the lack of any guidelines on how to implement it in practice. Therefore, the Committee considers that the inadequate availability of social housing for the most disadvantaged persons amounts to a breach of the Revised Charter."*

Consequently, even the assessment grids of public intervention are questioned. The Committee is introducing innovative pragmatism on how to consider public policies in France and in most European countries. There is no pertinent idea in itself; when they underlie actions, ideas are or are not validated by their impact. In the case at hand, social mix results in the development of discretionary mechanisms. Irrespective of the pertinence of the idea as a general principle, its application can constitute a violation of international law.

The Committee has reached conclusions in the same vein about discrimination against migrants and the Travellers. The long delays in access to housing for migrants are not justified by socio-demographic data. The Committee has concluded that there is indirect, systemic discrimination, without any positive commitment from this or that actor, but consisting of a set of shared procedures. The Committee has concluded that there is a breach of Article 31 combined with Article E (discrimination) of the Revised Social Charter. In so doing, it points to the responsibility of the State to prevent systematic discrimination. The responsibility of the State is not only a moral one in regard of the malfunctioning of the mechanisms at work; the State is directly responsible for failing to correct malfunctions. It is an important point of case law for all actors faced with the structural causes of exclusion, without any apparent responsible party: the State is responsible for this lack of an apparent responsible party by the mere existence of facts.

As regards the Travellers, the lack of a solution to the illicit situation of the households concerned is first called to question. The State is responsible not to restrict the local authorities any longer from accomplishing their missions to protect social rights. For foreign Roma living in settlements of undefined legal status, as well, the Committee pointed out that "*public authorities should make every effort to seek solutions acceptable for all parties, in order to avoid situations in which Roma and Travellers are in danger of being excluded from access to services and amenities to which they are entitled as citizens of the state where they live."*

Even the henceforth sacrosanct violations of the freedoms of migrants, as a demographic regulation policy, must adapt to the rules of access to social services.

Through these few examples, the Committee of Social Rights has given clear definitions, a hierarchical structure of public priorities, within the framework of a case-law contribution propitious for future judicial decisions, at the national and international levels. It is also a tool that helps bring the civil dialogue out of many insular debates and into a more objective, universal and comparative dimension. To really capitalise on this potential, a civil society must now take over, revitalise the discussion on the political front, in the administration, and in the courts of justice.

Housing rights in the European Union

By **Ioannis Dimitrakopoulos**, *Head of Department Equality & Citizens Rights, Fundamental Rights Agency*[1]

THE WORK OF THE FRA

The European Union Agency for Fundamental Rights[2] (FRA), and, before 2007, its predecessor the European Union Monitoring Centre on Racism and Xenophobia (EUMC), monitor regularly the housing situation of migrants and ethnic minorities to identify evidence of discrimination, as well as positive policies and measures. Poor housing conditions, homelessness and relative disadvantage contribute to entrenched patterns of social and economic inequality and exacerbate phenomena of social exclusion. The results of the Agency's work are presented in its Annual Reports, its specialised online database[3] and thematic reports, such as its 2006 comparative report[4] on the housing situation of migrants and minorities in the 15[5] EU Member States. This comprehensive thematic report is drawing upon materials available in more than thirty reports that had been commissioned from the Agency's RAXEN[6] National Focal Points for individual countries from 2003 to 2005. Following up to its past work on housing the FRA launched in September 2008, after consultation with its key stakeholders, including the Council of Europe and the European Commission, an ambitious EU wide project investigating housing conditions for Roma and Traveller populations.

SOME KEY FINDINGS OF THE FRA'S MONITORING AND RESEARCH

The work of the Agency, since 2000, shows that across the European Union the rights of migrants and ethnic minorities to an adequate standard of housing are often not respected. Many live in poor housing conditions which contribute to entrenched patterns of social and economic inequality, as a result of persistent, extensive and varied forms of housing discrimination in terms of location, tenure and ethnicity. In some Member States, increasing socioeconomic divisions within ethnic minority groups are facilitating movement by some households out of inner city areas into suburban and rural locations, while other poorer households are increasingly concentrated in inner city areas. Across ethnic minority groups there are substantial differences in housing conditions or tenure patterns, and in the extent of discrimination and hostility. Increasing deregulation of segments of the housing market has impacted negatively on the already fragile and unprotected housing situation of immigrant workers and ethnic minorities, particularly Roma.

THE SITUATION OF MIGRANTS

The housing policies of EU Member States addressing issues of migrant integration differ significantly, although tentatively they could be grouped into two main clusters: The first cluster consists of countries, such as Austria, Germany, Ireland, Denmark, the Netherlands, Sweden, Luxemburg and, to a lesser extent, the United Kingdom, where state intervention has been the usual practice for reducing housing exclusion and allocating social housing. In this cluster state intervention is not just a one-off practice in reaction to situations of extreme housing deprivation, but a continuous mechanism balancing market prices and housing affordability. The second cluster comprises countries, such as Greece, Portugal, Spain, Italy, Cyprus and Malta, where migrant integration policies have been haphazardly managed or where social housing provision is limited or inexistent, rendering migrants particularly vulnerable. Where scarcity of social housing is combined with the high prices of the market migrants are found living in substandard conditions, more often than not in improvised accommodation that can vary from renting basements or storage areas to illegally occupying abandoned warehouses, or squatting in derelict buildings. In this cluster, migrant workers' experiences of housing insecurity are pervasive and directly impinge on their standard of living, as they are subjected to higher levels of overcrowding and exploitation through higher comparative rents. However, these problems common to the second cluster are gradually appearing in those countries in the first cluster, which are replacing their regulatory measures with market mechanisms.

ROMA HOUSING

The housing situation of Roma in the European Union has already been the subject of a Council of Europe Recommendation[7] and European Parliament Resolutions. In spite of social inclusion measures, Roma continue to be one of the minorities most affected by inadequate housing conditions often living in segregated neighbourhoods and settlements with substandard infrastructure. In Spain, Roma are estimated to constitute approximately 80 per cent of the population living in shanty-towns. In Greece and Italy[8], as well as in some "new" Member States, Roma settlements lack basic infrastructure and their residents are often victims of evictions and forced displacements. Housing conditions affect other areas

1 Email: information@fra.europa.eu. The views and opinions presented here by the author do not necessarily reflect those of the Fundamental Rights Agency (FRA).

2 More information available at www.fra.europa.eu

3 Available at http://www.fra.europa.eu/factsheets

4 Available at http://fra.europa.eu/fra/material/pub/comparativestudy/CS-Housing-en.pdf

5 The report covered the so-called "old Member States"

6 Since 2000 the Agency collects statistical and other data and information in all EU Member States through its RAXEN network of National Focal Points on issues of racism, xenophobia and related intolerances. More information available at http://www.fra.europa.eu/fra/index.php?fuseaction=content.dsp_cat_content&catid=4864fc41c50f2

7 Recommendation (2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe available at https://wcd.coe.int/ViewDoc.jsp?id=825545&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75

8 See also the August 2008 FRA incident report on the Ponticelli incidents in Naples, Italy available at http://fra.europa.eu/fra/material/pub/ROMA/Incid-Report-Italy-08_en.pdf

such as education, work and health resulting in the entrapment in a cycle of poverty and social exclusion. Over recent years, as awareness regarding the level of housing deprivation affecting Roma community has been increasing, Member States, such as Bulgaria, Slovakia, the Czech Republic, Hungary Poland and Romania have undertaken comprehensive urban rehabilitation programmes supported by instruments of the European Union's Structural Funds, such as the European Regional Development Fund (ERDF) to improve conditions.

HOUSING PROBLEMS OF ASYLUM SEEKERS AND IRREGULAR MIGRANTS

The challenges posed by asylum seekers and irregular migrants are of a special nature and deserve to be singled out. Both groups are affected by their precarious status: for asylum seekers the main problem lies in the fact that public housing provision has been limited in some Member States, while for irregular immigrants it is their very 'irregular' status that makes their claims for accommodation untenable. The effects of these conditions have been to exacerbate the social exclusion of both groups. In some Member States failed asylum seekers have been swelling the ranks of homeless people, and a similar trend has been observed for irregular immigrants.

HOUSING IN EUROPEAN UNION POLICIES AND ACTIONS

Although a European Parliament Resolution[9] in May 1997 on the social aspects of housing called on the Member States to include within the Treaty provisions regarding "the right to decent and affordable housing", the Treaty on European Union (TEU) foresees no direct Community competence in housing, which remains the responsibility of Member States, usually at sub-national and municipal level. The European Union Charter of Fundamental Rights recognises in Article 34 only the right to "…housing assistance to ensure decent existence for those who lack sufficient resources". However, policy makers gradually acknowledge that issues of community competence, such as equal treatment, social inclusion, migrant integration, community cohesion and active citizenship are directly affected by housing policies, investment and social housing systems. These issues are key constituent elements for achieving social cohesion and integration, thus overriding objectives of the TEU and, in addition, impact upon economic competitiveness and growth.

The European Parliament has repeatedly highlighted housing as an issue of concern, for example in its April 2005 Resolution on the situation of the Roma in European Union, which called on the Member States to take concrete steps to bring about "de-ghettoisation", combat discriminatory practices in providing housing and to assist individual Roma in finding alternative, sanitary housing.[10] One year later the European Parliament adopted a new Resolution on the situation of Roma women in the European Union urging "…Member States to improve Romani housing by providing recognition under domestic law of a right to adequate housing, remedying the current dearth of protection available to individuals under domestic law against forced eviction, adopting in consultation with representatives of affected communities comprehensive plans for financing the improvement of living and housing conditions in districts which have a sizeable Romani population and ordering local authorities to promptly provide adequate potable water, electricity, waste removal, public transport and roads."[11] Lately, the European Parliament in its January 2008 Motion for a Resolution[12] on a European Roma strategy called on the European Commission to include improvement of housing conditions in its action plans for Roma integration asking "…Member States (to) end the destruction of Roma settlements under the pretext of urban modernisation programmes".

European Commission activities related to housing were gradually introduced through the Structural Funds and especially the European Regional Development Fund (ERDF) for improving the social and economic infrastructure of countries and regions with Roma populations supporting measures of urban rehabilitation and improvement of housing stock. In parallel to strategies targeting the Roma population, the Commission also addresses the issue of decent housing and homelessness in its Social Protection and Social Inclusion Strategy with emphasis on the elaboration of common definitions and indicators. In the framework of the Open Methodology of Coordination for Social Protection and Social Inclusion, the 2005 Joint Report identified "ensuring decent accommodation" as one of seven key policy priorities. In this context Regulation 763 of 9 July 2008 on "Population and Housing Censuses"[13] is an important step forward leading to the development of robust and comparable official statistical data[14] on housing that will facilitate the development of evidence based policies.

In terms of EU legislation referring to housing the 2000/78/EC "Racial Equality Directive"[15] constitutes a notable development with its specific reference to the application of the equal treatment principle between persons irrespective of racial or ethnic origin in, *inter alia,* "…access to and supply of goods and services which are available to the public, including housing". Equally, the 2004/13/EC "Gender Directive"[16] imple-

Policy makers gradually acknowledge that issues of community competence, such as equal treatment, social inclusion, migrant integration, community cohesion and active citizenship are directly affected by housing policies, investment and social housing systems.

9 Available at http://www.europarl.europa.eu/pv2/pv2?PRG=DOCPV&APP=PV2&LANGUE=EN&SDOCTA=10&TXTLST=1&POS=1&Type_Doc=RESOL&TPV=DEF&DATE=290597&PrgPrev=PRG@TITRE|APP@PV2|TYPEF@TITRE|YEAR@97|Find@housing|FILE@BIBLIO97|PLAGE@1&TYPEF=TITRE&NUMB=1&DATEF=970529

10 Available at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2005-0151+0+DOC+XML+V0//EN

11 Available at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0244+0+DOC+XML+V0//EN

12 Available at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+MOTION+B6-2008-0055+0+DOC+PDF+V0//EN&language=EN

13 Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0014:0020:EN:PDF

14 Hopefully, significant variables, such as ethnicity and disability, currently not included in the Regulation, will be added in the future.

15 Available at http://ec.europa.eu/employment_social/fundamental_rights/pdf/legisln/2000_43_en.pdf

16 Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0113:EN:HTML

menting the principle of equal treatment between women and men also introduced a similar reference to housing.

THE RIGHT TO ADEQUATE HOUSING

While acknowledging that currently the European Union does not have *sensu stricto* a competence for housing, the human rights notion of "housing" involves, beyond "shelter", a complex set of inter-related issues, such as social security, environmental sustainability and urban regeneration, as well as concerns about equal treatment, social integration and community cohesion. In this light, therefore, it is possible to identify interlinked areas of Community competence.

Access to adequate housing is a basic human right, not merely a condition for sustainable social and economic development. The right to adequate housing is enshrined in "core" international human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, the Convention Relating to the Status of Refugees, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Article 25 of the Universal Declaration of Human Rights stipulates that *"Everyone has the right to a standard of living adequate for the health and well-being of himself [herself] and of his [her] family, including food, clothing, housing and medical care…";* and Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, recognises *"… the right of everyone to an adequate standard of living for himself [herself] and for his [her] family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."* An important and comprehensive interpretation of this article was provided in General Comment No. 4[17] of the Committee on Economic, Social and Cultural Rights reading inter alia the reference to "housing" in Article 11(1) as *adequate* housing defined in terms of (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy. However, as Miloon Kothari[18] UN Special Rapporteur on adequate housing noted in his 2008 annual report[19], "…national legislative and policy frameworks and Court decisions in the majority of national jurisdictions continue to consider housing, land and property as marketable commodities rather than as human rights in need of protection".

At the regional level the European Social Charter[20] adopted in 1961 and revised in 1996 protects under Article 31, "…the effective exercise of the right to housing" and Parties to the Charter undertake "to take measures designed: (1) to promote access to housing of an adequate standard; (2) to prevent and reduce homelessness with a view to its gradual elimination; (3) to make the price of housing accessible to those without adequate resources." The European Committee of Social Rights (ECSR) supervises the observance of the Social Charter dealing with collective complaints and recently reported on a case of a collective complaint brought by FEANTSA against France, which led on July 2, 2008 the Committee of Ministers[21] of the Council of Europe to rule unanimously that Articles 31, §1, §2 and §3 on the right to housing of the 1996 Revised European Social Charter[22] had been violated on the grounds of insufficient progress as regards the eradication of substandard housing and lack of proper amenities of a large number of households. The deficient implementation of legislation on stopping places for Travellers was also highlighted, as well as the fact that available statistics on unfulfilled social housing applications for migrants might indicate a problem of indirect discrimination.

In light of the above and acknowledging that housing is an element of human dignity and an essential component of an advanced social protection system, monitoring measures striving for the highest level of comparability at EU level, especially in view of the provisions of Regulation 763/2008 on "Population and Housing Censuses" could facilitate that international housing rights obligations, Article 34(3) of the Charter of Fundamental Rights and Article 31 of the revised European Social Charter are respected, protected and promoted across the EU in the context of a human rights-based approach which identifies both rights-holders' entitlements and, correspondingly, the duty-bearers' obligations.

17 Available at http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+4.En?OpenDocument

18 Replaced by Mrs. Raquel Rolnik since 1 May 2008

19 13 February 2008, available at http://daccessdds.un.org/doc/UNDOC/GEN/G08/105/45/PDF/G0810545.pdf?OpenElement

20 Available at http://conventions.coe.int/treaty/en/Treaties/Html/163.htm

21 Available at https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResChS(2008)8&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75

22 Available at http://conventions.coe.int/treaty/en/Treaties/Html/163.htm

The scope and meaning of the right to housing

By **Nicolas Bernard**[1], *Professor, Facultés Universitaires Saint-Louis, Belgium*

HOW THE RIGHT TO HOUSING IS CONSTITUTIONALLY ENSHRINED IN THE DIFFERENT EU STATES

The right to housing is now widely recognized in international instruments[2], but nowhere near all of them have direct effect, and so are of uncertain application in cases before courts and tribunals. This is why various European countries have also opted to entrench the right to housing in their supreme source of legal rules within their internal legal system - the Constitution. These States form a fairly representative panel, including as they do many northern and southern European countries, both "Old Europe" and new entrant nations, etc[3].

But what of those countries (at least the main ones) who have not enshrined the right to housing in their Constitution? France is a prime example, but the Constitutional Council in a decision of 19 January 1995, officially declared the "possibility for everyone to be decently housed" to be an "objective of constitutional force"[4]. It is true that neither Italy nor Germany have constitutional provisions that entrench the right to housing, but their fundamental and organic laws nonetheless hedge around the right to own property with restrictions in the name of social justice that are sufficiently explicit as to be interpreted as a recognition of the right to housing in relation to it[5]. The Irish Constitution, for its part, recognizes that, "the exercise [of the right of private ownership] ought, in civil society, to be regulated by the principles of social justice" (Articles 43.1 and 2).

ELEMENTS OF THE RIGHT TO HOUSING

But what essentially does the expression "the right to housing" mean? Anything but trivial, it is a highly meaningful question, replete with a range of options, each signifying widely differing social policy choices.

The adjective "decent", with which the right to housing is often enshrined, harbours multiple meanings. Do the physical quality requirements that housing must fulfil to classify as decent have to be the highest standards going (a fundamental right like the right to housing cannot compromise on a cut-price solution), or does it mean the very opposite - that standards of decency must be set at a *realistic* level so that housing remains affordable by those vulnerable to poverty (to whom the right to housing is chiefly - thought not exclusively - addressed)? To play the devil's advocate - should we force the have-nots to meet a "haves" standard at the clear risk of finding themselves out on the street? Another question tied into the first arises naturally when talk turns to the decency of housing. With *whom* lies the right to decide whether accommodation is decent? In other words, does housing have to be decent in the eyes of the authorities or the person who lives in it? It is anything but a trivial question. The public authorities, whose job it is to promote social progress through rising living standards for all citizens, may well be tempted to set the "bar" at the highest possible level on the housing quality scale, while individuals living on a knife-edge will often put up with substandard housing, knowing full well that the odds are against finding anywhere better to live when affordable housing is in short supply. Should we therefore impose one-size-fits-all standards of decency, or rather favour case-by-case assessment?

But it is not enough for a home to be in good condition (a minimum requirement, let it be said, that is very far from being met everywhere). To have any chance of fulfilling that core mission of social well-being commonly attributed to it, it must also meet other more general criteria. As well as providing the individual with physical shelter, housing must also be financially affordable for vulnerable households, be in a healthy environment, linked into a network of efficient public services, physically adapted to its occupants and provide its occupants with guaranteed long-term stability. More than housing understood in the narrow sense as shelter, what must be sought is a *living environment*, so that the normal lifeplace can be somewhere where human beings feel at ease and can successfully plan for the future and raise a family. And even beyond that, housing must enable individuals to assume an active role in our democracy, to play a full part in the life of the society that accommodates them, to be citizens in the original meaning of the term, to be full members of society.

Finally, care must be taken not to subsume *the right to housing* within *housing rights* (the rights of those already in housing, i.e., tenants' rights). It is an established paradox that *access to* a right narrows in proportion to the increased legal protection given to it. Pulling up the ladder once within the castle walls, as it were.

But what essentially does the expression "the right to housing" mean? Anything but trivial, it is a highly meaningful question, replete with a range of options, each signifying widely differing social policy choices.

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2 Article 25.1 of the Universal Declaration of Human Rights of 10 December 1948, Article 11.1 of the International Covenant on Economic, Social and Cultural Rights of 19 December 1966, Article 31 of the Council of Europe's European Social Charter drawn up on 18 October 1961 as revised on 3 May 1996, Resolution of the European Parliament of 16 June 1987, Article II-34.3 of the Charter of Fundamental Rights of the European Union, etc

3 Article 65.1 of the Portuguese Constitution, Article 23 of the Belgian Constitution, Article 47, subparagraph 1, of the Spanish Constitution, Article 75.1 of the Constitution of Poland, etc.

4 C.C., No. 94.359 DC (Diversity in Housing Act), 19 January 1995, *Rec*. p. 176 and *A.D.*, 1995, p. 455, note B. JORION (case reports).

5 For the Italian Constitution, "Private ownership is recognized (...) by laws determining (...) its limits, in order to ensure its social function [...]" (Article 42.2) while the German Basic Law proclaims that, "Property entails obligations. Its use shall also serve the public good" (Article 14.2).

AGAINST WHOM SHOULD THE RIGHT TO HOUSING BE ASSERTED?

Having delimited the right to housing, it remains to be seen *against whom,* in general terms, it can be asserted: public authorities, private individuals, or both? It is a core issue, because proclaiming a right, and failing even implicitly to indicate against which persons or institutions the right can be asserted is tantamount to promoting a hollow right that cannot easily be claimed by its holders. And that will only reinforce the impression of it as a token gesture and means to a clear conscience.

While the State may have a big responsibility for implementing economic, social and cultural rights, no action of any degree of effectiveness in housing is conceivable without the active contribution of private individuals, if only because by far most homes are private, sector-owned. It has to be admitted, therefore, that human rights can in certain circumstances have a "horizontal effect" that can be used by private individuals not in their relations with the State, but in those with *other private individuals*. But a nagging sense of unease still cannot be allayed. Putting too much onto the private sector overshadows the primary duty owed by the national authorities. Government cannot absolve itself of its obligation by claiming any form of subsidiarity with respect to the private sector. The State, in a word, has *primary* liability under the right to housing (which is not to say that it has *sole* liability). In France for example, the right to housing represents a "duty of solidarity for the Nation as a whole" according to the Act of 31 May 1990, but the Paris District Court has placed that duty "first and foremost on the State". More fundamentally, while the Act of 5 March 2007 (the DALO law) made the right to housing "enforceable", it is so *against the State* (in this case, the low rent social housing provider).

IS THE BENEFICIARY/PERSON ENTITLED TO THE RIGHT TO HOUSING BOUND BY ANY DUTY?

Does the right to housing impose a correlative duty on the beneficiary? Does the person entitled to the right to housing have to "make an effort" and "do his/her best" in order to "earn" this right? In the active welfare state in which we now live, this is an undeniably pressing question. Must the individual who claims application of the right to decent housing give something in return, if required (i.e., must a family on the waiting list for social housing accept the first flat offered under penalty of forfeiting any chance of public housing)? It is a complex issue, but there is no question in any circumstances of placing on the individual a burden that would vitiate their right to housing entirely. More basically, there are fundamental rights which the public authorities must ensure even before the question of duties can arise; defeating poverty is one. The best option, therefore, is certainly to stop moralizing and blaming the poor, who are anything but always responsible for their plight. Is the owner, for example, compelled to earn his right and put in something of his own in order to exercise it? It smacks of the poor being placed under close supervision or being monitored in the enjoyment of their fundamental rights for fear that they will abuse them.

CONCLUSION

There is a clear danger in enshrining the right to housing in law: a simple paper assertion devoid of sufficient legal effects would further conceal the de facto inequalities in our society. There is a real risk therefore of economic, social and cultural rights becoming mere token gestures. Vital though it be, enshrining the right to housing in legislation cannot in any circumstances suffice in and of itself. A constant effort is required, first from the authorities to bring in appropriate implementing measures, then from advocates and the judiciary to demonstrate imagination and boldness, and finally from the citizen to demand respect for his/her and others' rights. Whatever else, in order not to be at the mercy of uncertain regulations being written into law, some enterprising judges have decided to take the plunge, and draw from the fundamental right to housing, the necessary resources on which to base a series of decisions on the right to housing. These groundbreaking judges have digested the lesson that there is no point waiting for a right to be exercisable before applying it. Invoking it is precisely what helps give it substance. In that, these judges have fully fulfilled the role attributed to them by Antoine Garapon of "custodians of the promises" embodied in legislation.

The impact of European law on the right to housing: the example of the right to property

By **Marc Uhry**[1], *Alpil, France*

A Slovenian tenant has taken its government to the European Court of Human Rights (ECtHR) over the downgrading of the protection for tenants' rights. The complaint relates to the individual's right to property recognised under article 1 of Additional Protocol No. 1 of the ECtHR.

Do tenants have proprietary rights? In half the countries of Europe, they plainly do; in the other half, they logically cannot.

Housing is both essential to survival - a fundamental right - and a commodity, which keeps the relations between those with an interest in it under permanent strain. For the further development of the EU, in particular through international treaties and case law, harmonization of definitions is supremely important to ensure democratic control over the basic concepts that shape our common space.

AN ESSENTIAL DISTINCTION

In all countries, ownership defines the legal relationship of a person to an object and to those other people with an interest in that same object. One can distinguish two types of ownership right: a definition that comes down from Roman law, where ownership is an *absolute right*, and a more British definition of ownership as a *derived right* (Noyes, 1936).

The former case relates mainly to the Romance language countries, where property rights are seen as an exclusive relationship of the individual to the object possessed. Elsewhere, especially in the United Kingdom, ownership has been understood as a grant of enjoyment in return for consideration, stemming from the feudal system where only the Crown has absolute ownership of the land. "*In the English system of derived estates descending in a straight line, ownership is often only partial and dependant on others, and the transfer of proprietary rights is only seldom, if ever, complete and final. Contrast this with French land law, where both the right of ownership and the group of rights inherent in it must be transferred in full, and the transferor cannot retain any control over the right transferred*" (Galey & Booth, 2007).

This is an essential distinction where the right to housing is concerned. In Latin tradition, the right to housing is a social right stemming from government's responsibility to balance out unequal power relationships between private parties. The right to housing is a protection for occupiers against the threats that the absolute owner of housing can wield. In French law, for example, ownership is "*the right to enjoy and dispose of things in the most absolute manner, provided they are not used in a way prohibited by statutes or regulations*" (article 544, Civil Code). In this context, the right to property and the right to housing are at constant odds with one another, with the former usually winning in the trade off. This gives added importance to the 100 000 evictions that take place every year in the country. .

This importance of the right to property, which is directly attendant on liberty (article 2, Declaration of the Rights of Man, 1789) is a need that stems from the curious mix of its absolute nature and the surprising lack of a definition. It is only the sum of rights which, taken separately, are not fundamental. François Luchaire, member of the Constitutional Council, argues that "*the right of ownership is an artichoke right: even when a series of its attributes are removed, it remains what it is, except if its heart is removed, when it ceases to be*". This, for example, is the grounds for local government's paramount powers over land use (incomprehensible in the United Kingdom, where the local authority acts on a specific individual), the tax on vacant housing, etc. Paradoxically, the Roman law of ownership, the exclusive relationship of a person to a thing, offers local government policy instruments by which to argue the case for the general interest. At least it has only one person to deal with. By contrast, this very strong relationship places the occupier in a position of weakness in dealing with an owner who has the right to do anything that is not specifically prohibited.

The opposite situation prevails in the United Kingdom, and more broadly in the Common Law tradition countries, where derived rights enable a series of individuals to claim partial rights of ownership over land or housing. The issue before justice is to determine what right of ownership each one has. By this reckoning, the occupier's right, the right to housing is not inconsistent with the right of ownership, but is actually based on that concept to protect housing. The physical home may even incorporate an element of ownership in a legal system influenced by the philosophy of John Locke and his concept of property as what is *proper* to the individual (life, liberty, and goods). Since a home is proper to the individual, there is an aspect of property ownership to it. Latin countries offer tenants positive and precise legal protection, while permitting all that is not explicitly foreseen, whereas the United Kingdom offers little statutory protection, but warns all protagonists that any excess can be sanctioned.

The subtle differences in the right to property have a major influence on the organization of methods of regulation - chiefly legal in countries where it is a derived right, and more administrative in countries where it is an absolute right (Galey & Booth, 2007). The distinction between these two cultures (legal or administrative) where public intervention to protect individuals is concerned, is broadly reflected in the way the right to housing is organized. The importance of harmonising concepts on the international level, takes on a key dimension, which prevents jurisdiction on a case-by-case basis.

This alignment can be seen first-hand by the increase in central planning in the United Kingdom, illustrated by Gordon Brown's announcement of new town development, while France has just brought in an enforceable right to housing, imbuing the right to housing with a stronger legal dimension that does not square with

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France's tradition of policy-formulated social rights. If this convergence is not to be haphazard, but rather linked to ideas on the relationship between the right to ownership and the right to housing, it is important to look at how it is dealt with by the common benchmark of international law.

PROPERTY AND THE RIGHT TO HOUSING IN INTERNATIONAL LAW

The international definition of the right to property is well-established and is not the central theme of this article. The point here is to pin down the links between the three sides of the right to property -right to housing-human rights triangle.

International treaties are generally written - and translated! - so as to be compatible with the different legal cultures. So, article 17 of the Universal Declaration of Human Rights is translated literally between French and English: "*1. Everyone has the right to own property alone as well as in association with others. 2. No one shall be arbitrarily deprived of his property.*" This conceals subtle differences in concepts, since the French concept expressed by the word "*propriété*" is more akin to the concept of *ownership* than *property*. The European Convention for the Protection of Human Rights adds further to the confusion in article 1 of its Additional Protocol No. 1 "*Every natural or legal person is entitled to the peaceful enjoyment of his possessions ('biens'). No one shall be deprived of his possessions ('propriété') except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*"

The English language version of the text uses the concept of *possessions* to translate both the French words "*biens*" and "*propriété*" in the first two sentences.

A lack of clarity therefore surrounds the concepts used, and this is just for two of the official languages of the Council of Europe! But this lack of clarity was not too inconvenient as long as international law was used within its national language, its own courts and political culture.

The problem becomes clearer with case law. The European Court of Human Rights (ECtHR) has to rule on specific cases from a uniform interpretation of the texts. Filtering down from the top of the hierarchy of legal rules, case law will over time entrench itself in the different national legal systems, reshaping the underlying scope of the concepts used. And, as has been seen, the whole system of public intervention in housing protection results largely from the approach to the right of property/ownership. International case law will therefore shape the protection of the right to housing in the medium term.

The ECtHR uses an original combination of Roman law and Common law, differentiating for example, a 'substantial interest' from a possession ('bien'), which is protected by property law.[2] If every country uses its own definition, then the concept of possession has a range of its own. What could be considered as possessions ('biens'), are: company shares[3]; administrative permits such as the licence to extract gravel[4], or fishing rights[5], planning permission[6], and even the claim for negligence[7]. Of significance for housing, is that the Court recognised the rights flowing from tenancies[8] as a possession ('bien').

It's therefore not like in Latin countries where usus, fructus and abusus determine what is property, but rather having a substantial stake in it, as well as the legitimate expectation of having it in the future. For instance, the failure to honour an option to renew a lease, where there was a legitimate expectation for renewal, was held to be a breach of Article 1 of protocol n.1[9].

It is possible that domestic legislation defines to some extent what is a legitimate expectation. In Russia, the right to housing is strongly defined and protected. The ECtHR recently decided in several Russian cases that substantial delays in the allocation of social housing constituted an infringement of the right to property, and a violation of the right to a fair trial (article 6), when the right to housing is judicially established[10].

This definition of property influences not only relations between people, but also the way in which public authorities can intervene in regulatory matters and the design of public policies. States' power to control rents, for example, is a highly sensitive issue that has cropped up many times. In the case of *Hutten-Czapska v. Poland (2006)*, an owner complained that rent controls were set at a level which did not cover the

2 The Court thought that the concept of respect for 'biens' is equivalent to the right to 'propriété'. CEDH, 1979, Marckx v.Belgium
3 CEDH, 1987, Compagnie S-T v. Belgium
4 CEDH, 1991, Fredin v. Sweden
5 CEDH, 1989, Baner v. Sweden
6 CEDH, 1992, Pine Valley Developments, v. Ireland
7 CEDH, 1996, Pressos Compania Naviera v. Belgium.
8 CEDH, 1990, Mellacher v. Autriche
9 CEDH, 2002, Stretch v. United Kingdom
10 CEDH, Shevchenko v. Russia (2008), Burdov v. Russia (2004), Novikov v. Russia (2008), Nagovitsjne v.Russia (2008), Ponomarenko v. Russia (2007), Sypchenko v. Russia (2007) etc. These cases, like all the ones cited here have been identified as significant in the subject of housing rights by Padraic Kenna, Faculty of Law, University of Galway, Ireland.

maintenance costs of the property, which had been hugely increased by new regulations on the matter. The Court found that the right of ownership had been breached by disproportionate burden imposed on the owner, but held that controlling rents even at a level beneath the market value constituted an infringement, but not a violation, of the right of ownership. It is a reasonable measure for regulating the use of property by the State, which has wide discretion to define the public interest grounds that justify restrictions on owners' freedom of contract and rights.

That said, surely the European rules require States to secure a free market, even it means taking corrective, non-binding measures to help vulnerable groups? This is what the landlords' advocates sought to argue in the case of *Mellacher v. Austria (1989)*. The Court replied that it would "*hardly be consistent with these aims nor would it be practicable to make the reductions of rent dependent on the specific situation of each tenant. [...] It is undoubtedly true that the rent reductions are striking in their amount [22 to 80%] (…), but it does not follow that these reductions constitute a disproportionate burden. The fact that the original rents were agreed upon and corresponded to the then prevailing market conditions does not mean that the legislature could not reasonably decide as a matter of policy that they were unacceptable from the point of view of social justice*."

According to the ECtHR, there is no hierarchy between the right of ownership and the right to housing. The need to provide housing for all residents is therefore arguably a public interest ground justifying regulatory rent controls. As well as rent control, extensions on the terms of leases and stays of execution of eviction orders are also in the frame (*Immobiliare Saffi v. Italy, 1999*). Extending the definition of property as a derived right may add an ownership element to the concept of home or the rights related to a lease. The Court has not so far given an express ruling in countries other than those whose municipal law specifies that the lease agreement confers a real property interest (*James v. United Kingdom, 1986*), but the proceedings against Slovenia show that a lease agreement may fall within the scope of article 1 of the Additional Protocol such that any occupancy interest may contain an ownership interest. By infringing upon tenants' status, the Slovenian government has arguably violated tenants' '*possessions*', i.e., their property rights. In the case of *Marckx v. Belgium (1979)*, the Court clearly asserts the link between possessions and ownership: "*(…) By recognising that everyone has the right to the peaceful enjoyment of his possessions, Article 1 (P1-1) is in substance guaranteeing the right of property. This is the clear impression left by the words "possessions" and "use of property" (in French: "biens", "propriété", "usage des biens"); the preparatory work, for its part, confirms this unequivocally: the drafters continually spoke of "right of property" or "right to property" to describe the subject-matter of the successive drafts which were the forerunners of the present Article 1 (P1-1).*"

The Court has gradually but steadily extended the attributes of property through the concept of possessions, amalgamating the different meanings in national law. The Court has therefore had occasion to protect furnished and unfurnished, tangible and intangible possessions, claims, shares, a customer base, and even social welfare benefits, ... "*neither the lack of recognition by the domestic laws of a private interest such as a "right" nor the fact that these laws do not regard such interest as a "right of property", does not necessarily prevent the interest in question, in some circumstances, from being regarded as a "possession" within the meaning of Article 1 of Protocol No. 1"* (Oneryildiz v. Turkey, 2002).

Developments in the legal rules, especially in the European Union, obviously have a direct influence on housing production, and hence the fulfilment of the right to housing: tax harmonization requires clarification of VAT exemptions; quality standards and environmental concerns impact production costs and user costs; banking system rules determine the amount of outstanding mortgage loans and hence market rates, etc.

More fundamentally, however, the contribution of the European Court of Human Rights to the definition of the right to property reflects a gradual harmonisation of approaches to the broad dividing line between housing as a commodity and housing as a fundamental right which justifies public intervention. This definition enshrines part of the Common Law tradition, disaggregating the concept of property as if it were a derived right. But it also reflects part of the Roman law tradition by recognizing States' power to regulate that right to an intense degree and in all circumstances. This new emerging culture will necessarily give rise to a new organization of legal and administrative systems that will produce a radical shake-up in housing policies and the courts' approach to the right to housing.

What is important is to take a lead on these changes, to ensure that they are not at the mercy of possible fads, that they are solidly built, and do not leave out the most vulnerable.

According to the ECtHR, there is no hierarchy between the right of ownership and the right to housing.

The Right to Housing in Scotland

By **Tom Mullen**[1], *Professor of Law, University of Glasgow, Scotland*

INTRODUCTION

The expression 'right to housing' can mean a variety of things, but in this article I will concentrate on the rights of actually or potentially homeless persons in Scotland, as the ambitious programme of homelessness legislation enacted in recent years has attracted considerable international attention. Scotland is part of the United Kingdom of Great Britain and Northern Ireland (UK) but enjoys a large measure of legal and political autonomy within the UK's uncodified constitution. As a result, is possible for Scotland to pursue a different housing policy from the rest of the UK. It has done this in several areas of housing policy including homelessness.

The most significant development in housing rights in the recent decades has been the creation and extension of enforceable rights to housing for the homeless.

Scots law is in general compliant with the United Kingdom's international obligations in the area of housing rights, and the rights of the homeless in particular have been extended in recent years. However, this has been motivated principally by a desire to adopt a progressive social policy rather than by any perceived need to comply with international legal obligations.

RIGHTS FOR THE HOMELESS

The Housing (Homeless Persons) Act 1977: The most significant development in housing rights in recent decades has been the creation and extension of enforceable rights to housing for the homeless. The first comprehensive legislation was the Housing (Homeless Persons) Act 1977, a measure which applied to the whole of Great Britain, and which imposed a duty on all local authorities to provide or find housing for persons who applied to them as homeless. Local authorities could satisfy their duties to house the homeless either by providing houses from their own stock, or arranging for another person such as another social landlord, a private sector landlord, or even a relative or friend of the applicant to provide housing accommodation. Local authorities were also entitled to refer certain priority need homeless applicants to other local authorities for performance of the re-housing duty. Ambitious as this legislation was for its time, it is important to note that it did not provide a right to housing accommodation for all homeless applicants. Most importantly, the duty to provide *long-term* accommodation applied only to persons who had a 'priority need' for accommodation. The concept of priority need originally covered only applicants who were:

- pregnant;
- had dependant children;
- vulnerable (as a result of old age, mental illness or handicap or physical disability or other special reason);
- living with or who might reasonably be expected to live with any of the above;
- homeless as a result of an emergency (such as flood, fire or other disaster).

Priority need was for many years the principal rationing device in the homelessness legislation. Those who did not have priority need were entitled only to advice and assistance and were not entitled to the provision of accommodation.

A secondary rationing device was the concept of 'intentional homelessness'. This concept, which has always been somewhat controversial, had not been included in the Housing (Homeless Persons) Bill as originally presented to the UK Parliament, but was added during the legislative process, essentially to allay the fears of certain local authorities that large numbers of persons would give up their existing accommodation in order to secure a better house under the new legislation. Persons deemed to have become homeless intentionally were entitled only to temporary accommodation in order to give them an opportunity to find accommodation for themselves, and to advice and assistance.

Subsequent Legislation: There have been significant changes since 1978 in the scope of the legislation including the development of different approaches between, on the one hand Scotland, and on the other England and Wales. The 1977 Act was introduced under a Labour Government and the Conservative Governments of 1979-1997 were less sympathetic to its aims. Part VII of the Housing Act 1996 substantially reduced the rights of homeless persons in England and Wales, but no corresponding changes were made in Scotland at that time. Most of the effects of the 1996 Act were reversed by the subsequent Labour Government which enacted the Homelessness Act 2002.

Meanwhile, in Scotland, homelessness was also high on the political agenda. In August 1999, the Scottish Executive established a Homelessness Task Force to review the causes and nature of homelessness in Scotland, consider current approaches and make recommendations for change. The Task Force's interim and final reports[2] formed the basis of subsequent legislation which substantially extended the rights of homelessness persons: the Housing (Scotland) Act 2001 and the Homelessness (Scotland) Act 2003. In terms of individual housing rights the key recommendations of the task force were:

- Provision of temporary accommodation to *all* homeless persons including those not in priority need;
- Gradual expansion of the definition of priority need leading to its elimination as a rationing criterion by 2012;
- Local authorities should have a power to investigate whether applicants were intentionally homeless rather than a duty to do so;

I will now explain briefly the current position regarding the rights of the homeless dealing with three key issues - the definition of homelessness; priority need; and intentional homelessness.

RIGHTS OF THE HOMELESS

Definition: Who is Homeless? The Scottish legislation employs a uniquely broad definition of homelessness which has no equivalent anywhere in Europe. In order to illustrate this, it is useful to compare the scope of the Scottish legislation with the European Typology of Homelessness and Housing Exclusion (ETHOS).[3] ETHOS divides homelessness into four conceptual categories (roofless, houseless, insecure accommoda-

1 Email at: t.mullen@law.gla.ac.uk
2 The final report is available at http://www.scotland.gov.uk/library5/housing/htff-00.asp
3 Available at http://www.feantsa.org/files/indicators_wg/ETHOS2007/general/EN_2007EthosLeaflet.pdf

tion and inadequate accommodation) and subdivides these into 13 operational categories. Space does not permit a detailed comparison, but the current Scottish definition extends far beyond rooflessness to cover most of the situations identified in the ETHOS typology under insecure accommodation and inadequate accommodation, and some of those identified under houselessness. As a result, there are a variety of situations in which a person who currently occupies accommodation may apply as homeless without having to give up that accommodation first (including that the applicant cannot secure entry to accommodation; risk of domestic abuse; overcrowding/danger to health; not reasonable to occupy; permission to stay has been withdrawn). The 'safety net' of homelessness legislation is, therefore, very widely cast.

Priority Need: As a first step in progress towards the goal of eliminating priority need as a rationing criterion, the 2003 Act substantially extended the categories of priority need with effect from 1st January 2004. Since then the following *additional* categories of persons have been defined as having priority need:

- vulnerable as a result of personality disorder, chronic ill-health, miscarriage/abortion, discharge from hospital/prison/armed forces;
- Persons aged 16 or 17;
- Persons aged 18 to 20 at risk of exploitation or substance abuse, or who were in care at or after school leaving age;
- persons who run the risk of violence or harassment by reason of religion, race, colour, ethnic or national origins or sexual orientation;
- persons who run the risk of domestic abuse.

Whilst this represented a major extension of the priority need categories, there remains a long way still to go if the concept of priority need is to be completely abolished. Implementation of this goal is discussed further below.

Intentional Homelessness: Only 4.4% of homeless applicants assessed as having priority need were classified as intentionally homeless in 2006/2007, so intentionality has much less practical importance as a rationing device than priority need. Nonetheless, it retains considerable symbolic importance in the legislative scheme, and in the light of the legislative history, the change made by the 2003 Act whereby local authorities will in future have a power rather than a duty to investigate the question of intentional homelessness, marks a significant change of policy. If a local authority chooses not to investigate the question of intentional homelessness the effect will be that all priority need applicants will in practice have a right to permanent accommodation. If a local authority wishes to distinguish between the intentionally and unintentionally homeless, it remains free to do so. However, the consequences of a finding of intentional homelessness will change. To simplify, the current position is that intentionally homeless applicants are only entitled to temporary accommodation. In future, however, those in priority need, will be entitled to a package of a short-term tenancy plus housing support with a view to moving the applicant to a permanent tenancy in due course. However, although research on the accommodation and support needs of intentionally homeless households was published in 2006,[4] no timetable has yet been set for commencement of these provisions of the 2003 Act.

IMPLEMENTATION OF THE PROGRAMME

Introduction: Space does not permit a comprehensive analysis of implementation, so I will explain the general framework and highlight two key issues: provision of temporary accommodation, and progress towards abolition of priority need.

Monitoring Progress: The Scottish Executive set up a Homelessness Monitoring Group in May 2002 to support and monitor the implementation of the Task Forces' recommendations. The Group was reformed with a revised membership in Autumn 2007. It set five top-level outcomes for monitoring progress. These were:

- no-one need sleep rough;
- existing homelessness becomes more visible;
- sustainable resettlement is secured for people who have become homeless;
- fewer people become homeless in the first place;
- the duration of homelessness is reduced.

The most recent report of the Homelessness Monitoring Group[5] indicated that there was some evidence that rough sleeping is reducing although there was significant variation between local authority areas and some concern about the accuracy of official statistics. There was a rapid (34%) increase in the number of households applying as homeless from 2000/2001 to 2005/2006 (mainly from single person households) followed by a 2% drop in 2006/2007. Many local authorities took the view that the majority of hidden homelessness may now have been uncovered, although a few were concerned that this might not be the case. As for sustainable resettlement, the national statistics indicate that the proportion of repeat applications (i.e. within 12 months) has steadied at around 8%. Whilst it might be inferred from this that satisfactory outcomes were being achieved for most homeless households, the report acknowledges that there was little by way of more specific indicators of housing solutions being sustained.

The report noted that the limitations of available data made it difficult to assess the impact of local authorities' prevention work. There was a range of prevention activity taking place across Scotland, but the prevention-centred approach to homelessness was insufficiently embedded. The fifth outcome (duration) refers to the time between application as homeless and final discharge of duty to re-house priority need applicants. Here, there had been a very substantial increase from just less than 6 weeks in 2002/2003 to nearly 18 weeks in 2006/2007, meaning that many applicants are spending longer in temporary accommodation. The main reason for this is the shortage of appropriate settled accommodation for persons who have been accepted as homeless to move on to.

The picture in relation to the top-level outcomes is, therefore, mixed: there appears to have been a reasonable measure of success on the first three outcomes but the picture relating to the fourth is unclear and the trend on the fifth is in the wrong direction.

4 A. Rosengard et al, *Intentionally Homeless Households in Scotland* (2006). Available at http://www.scotland.gov.uk/Publications/2006/09/19111326/0

5 Available at http://www.scotland.gov.uk/Publications/2008/03/27142559/0

Temporary accommodation: Temporary accommodation has to be provided to homeless applicants in three situations: (1) while the application is being considered; (2) after a decision has been made to those who don't qualify for permanent accommodation, and (3) accommodation for applicants entitled to permanent accommodation where permanent accommodation is not yet available.

There has been a substantial rise in the number of households in temporary accommodation from 5,488 in 2003 to 9,164 in 2007. This was probably inevitable in view of the extension of the right to temporary accommodation to non-priority households in 2002, but demographic factors have also had an influence, and certain otherwise desirable measures have reduced local authorities' options in providing temporary accommodation. These include the decommissioning of homeless hostels (which did not provide a suitable environment) and subordinate legislation banning the use of 'bed and breakfast' accommodation for families with children.

Several indicators suggest that the housing system is under strain in this area. First, the rising numbers in temporary accommodation has risen. Second, a number of local authorities have recorded breaches of the legislation banning the use of unsuitable accommodation. Third, more than half of authorities cite pressure on temporary accommodation as a concern in meeting the 2012 target. Fourth, the national statistics suggest that a large proportion of persons assessed as homeless *non-priority* need is not offered temporary accommodation despite the fact that they have a legal entitlement to it. The 2006/2007 figures indicate that fully 41% (4,000) of applicants were offered only advice and assistance. Part of the explanation appears to be that official statistics do not accurately reflect practice. Nonetheless, these figures do suggest that the legislation is not being properly implemented in all cases.[6]

Abolition of Primary Need: The most pressing implementation issue is clearly the achievement of the 2012 target for abolition of priority need as a rationing criterion. In December 2005, as required by the legislation, the housing minister published a statement on the abolition of priority need confirming 31st December 2012 as the target date for the abolition of priority need and setting out the measures that Ministers and local authorities would take to achieve it.[7] The statement covered a wide range of issues but the key interim objective was that local authorities should consider how to reduce the proportion of homeless households assessed as non-priority need by 50% by 31st March 2009.

The Scottish Government remains committed to delivering the 2012 target and apparently remains optimistic about achieving it, but this optimism is not shared by all local authorities. There is clearly some anxiety amongst certain local authorities as to their capacity to find sufficient permanent accommodation for all homeless applicants by 31st December 2012, and the latest data suggests a majority of local authorities were behind schedule on progress towards the interim target of a 50% reduction in non-priority assessments. Local authorities see the key issue in reaching the target as being the availability of permanent tenancies in the social rented sector for re-housing homeless persons. Some local authorities are also concerned about the impact of the 2012 target on other desirable social policy objectives and have suggested that the rising proportion of lets in the social rented sector being allocated to homeless households might undermine efforts to achieve a 'better' social mix in social housing.

CONCLUSIONS

It is undoubtedly the case that major strides have been made towards achievement of the key targets of a uniquely ambitious social policy. There has been good progress on a number of relevant indicators but there are also signs of slippage in other areas. However, it is still too early to say whether the objectives set by the Homelessness Task Force, and which lie behind the legislation, will be realised in full. Shelter, the leading homelessness pressure group, has, for example, recently indicated that whilst it regarded the target as still achievable, it had a number of concerns including slippage on the 2009 interim target, insufficient data to assess adequately whether homeless persons are successfully sustaining accommodation allocated to them, the prevention of homelessness being insufficiently embedded in practice and the duration of homelessness episodes increasing.[8] Accordingly, they suggested that there are three immediate priorities for policy development: a greater focus on the contribution to be made by registered social landlords (i.e. social landlords who are not local authorities); an enhanced role for private landlords interested in fulfilling a quasi-social role (currently the subject of a government consultation); and better partnerships with private developers to ensure the building of more affordable housing units.

Although on balance, there seem to be good grounds for optimism, the Scottish Government and the housing policy community will need to continue to give careful attention to the issues of homelessness policy and practice if the vision set out by the Homelessness Task Force is to be realised.

I would like to thank Prof Suzanne Fitzpatrick and Gavin Corbett for their comments on a draft of this article.

6 *Homelessness Statistics in Scotland: 2006-2007*. Available at http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/135245

7 *Helping Homeless People: Homelessness Statement*. Available at http://www.scotland.gov.uk/Publications/2005/12/21133010/30107

8 Evidence to the Local Government and Communities Committee meeting on 11th June 2008. Available at: http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/progress_on_homelessness_evidence_to_local_government_and_communities_committee_11_june_2008

Progress report on the right to housing in France

By **Bernard Lacharme**, *General Secretary, Haut comité pour le logement des personnes défavorisées*[1] *(HCLPD), France*

A right to housing has been repeatedly enacted in French statute law since 1982, and while not expressly entrenched in the Constitution, it has nevertheless been acknowledged by the Constitutional Council as an objective "of constitutional force". This official recognition has been behind many statutory initiatives to promote housing for disadvantaged groups, but has been of no legal help for those that have failed. The "enforceable" right to housing (DALO)[2] is now changing this. The right to housing has ceased to be a mere public policy objective and has acquired the force of law: it has introduced a performance obligation.

Some of the issues faced when implementing the right to housing are common to many other European countries: soaring private property prices, the rise in urban poverty and the working poor, and a severe shortfall in the supply of social housing. But there is also a difficulty more specific to France: a certain "institutional disarray". France, which has a centralizing tradition, understood that housing and social welfare have to be area-based. But, it started a complex, and sometimes muddled decentralization process. Multiple tiers of responsibility were created, ranging from the 'commune' (there are 36 000 of them!) through to local authorities, '*départements,*' '*régions*' and central government. Each of these levels has powers that impact on the ability to address housing needs. Any local authority, by its action or inaction, can prevent the right to housing from being implemented, but none acting alone can ensure that it is applied.

This was what prompted the HCLPD, tasked with advising the President of the Republic and the Government, to propose in December 2002 that the right to housing be made an enforceable right, i.e., a right giving a remedy if it is not applied. Obviously, enforceability of the right is no substitute for the measures needed to increase social welfare resources, regulate markets, or join up national and local policies. But we saw it as a necessary driver to ensure that the right to housing received real priority, and beneficial policy decisions.

It was no easy decision to move from a paper right to one that lays a duty on government, because of the very demands it entails. It is why it took 4 years to get there. Scotland gave us a valuable lead: the example of a down-to-earth neighbouring country establishing an enforceable right to housing with a statutory timetable was an invaluable help to us in winning over the French government against the arguments that it could never work. But what clinched it was concerted action by the voluntary community, which took up the HCLPD's proposal as a common demand and promoted it incessantly to the Government and MPs. They made good use of the political context in the run-up to the May 2007 presidential elections, and it was the tiny red tents pitched in Paris by the "Don Quichotte" association that finally moved President Chirac to the swansong gesture of his term of office - to ask the Government to put an enforceable right to housing on the statute book.

The DALO Act of 5 March 2007 swept away the existing lack of accountability for implementing the right to housing: it is now underwritten by the State, from which (and if needed, against which) redress can be sought. Since 1 January 2008, a negotiated settlement can be sought from a mediation committee established in each *département*. From 1st October, families designated as 'priority' by the committees because they have no housing or are inadequately housed, can take the State to court if it fails to rehouse them. On 1st January 2012, this right to sue will be extended to anyone considered to have been on the social housing waiting list for an abnormally long time.

A national monitoring committee has been set up around the HCLPD, made up of representatives of all the actors concerned: local politicians, social and private landlords, integration associations and advocacy groups for those in inadequate housing, etc. The committee did not wait for court action to be taken: as early as 1st October 2007, it handed a report to the President of the Republic with 37 proposals for ensuring that the enforceable right works properly. There is a general understanding that the legislation is the first stage in the process. It created the performance obligation, but the State is not yet fully geared up to enforce it.

Several months on from the first negotiated settlement applications, the committee is now able to draw its first conclusions from which it will make fresh proposals. It has found that fewer people have used the settlement procedure than expected, given the depth of the crisis. Statistics show that 600 000 families could fall within the DALO priority criteria, while only 33 000 applications were made in the first six months of the year. But more information is needed. Lodging a formal appeal is neither an easy, nor routine task, and those who do it must get the necessary help from social services and voluntary agencies. Many, including welfare service providers, are still uninformed about the law.

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1 HCLPD : http://www.hclpd.gouv.fr/pow/idcplg?IdcService=SS_GET_PAGE&nodeId=570, contact : HCLPD@maisoncohesionsociale.gouv.fr

2 Act 2007-290 of 5 March 2007 establishing an enforceable right to housing, known as the "DALO" Act: http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000271094&dateTexte=

The enforceability of the right to housing is a potent force for action by those enduring housing deprivation.

To its great credit, however, the law is showing up the postcode lottery of French housing deprivation. The Ile de France region accounts for two-thirds of all applications, with the city of Paris alone accounting for a quarter. The Mediterranean coastal *départements* are also under severe strain. But half the *départements* recorded fewer than 60 applications in the first six months. These were foreseeable differences, but it is a very important finding in a country where the tendency is always to try and act nationwide using the same tools, and to set national targets for social housing production when the needs are resolutely local. The policy implications of this will now clearly need to be drawn. What the first applications show is that there are in fact large swathes of the country where the right to housing only required the backing of law to be complied with in practice, whilst elsewhere the needs are such that the legal provisions may end up with the State being found at fault.

The State has not thought far enough ahead, and the proposals of the monitoring committee's first report have gone largely unapplied. While not disavowing the enforceable right to housing, the Government set up a competing aim in 2007: selling-off social rental housing to make France a land of home-owners. But the DALO has started to exert pressure. On resuming business after the summer break, the Government will put to Parliament a bill on "action for housing" which includes some interesting steps forward on local policy management. Granted, housing is not yet a budgetary priority. But the first court cases from October are likely to reshape the landscape: the State could be ordered to make a recurring penalty payment to a social housing fund. This could prompt it into making budget provision before, rather than after a court order, especially as beyond the legal accountability lies a greater political accountability. In the past, central and local government have been able to pass the buck, with no one taking responsibility towards citizens. That responsibility now lies with the State, and it is the Government's job to provide the budgetary and legal resources to assume it.

The DALO Act did not magic away all the problems, but it did engage an irreversible process: there is no going back from the performance obligation. The enforceability of the right to housing is a potent force for action by those enduring housing deprivation and those who work with them. I am in no doubt that the voluntary sector, which successfully imposed it on politicians, will be able to make good use of it.

The individual right to housing in Finland

By **Jan-Erik Helenelund**[1], *Senior Researcher, University of Vaasa, Finland*

1. THE STATUS OF FUNDAMENTAL RIGHTS IN THE FINNISH CONSTITUTION

In the beginning of the 1990s, there was a large reform of the fundamental rights system in Finland which came into effect at the start of August 1995. There were multiple reasons for the reform, but according to the governmental bill, one of the key incentives was the ambition to give the human rights in the treaties and conventions ratified by Finland a stronger legal base in the Finnish Constitution. This was especially the case concerning the second generation of human rights, ESC-rights.[2]

The reform of the fundamental rights system was, without remarkable changes, included in the reform of the Finnish Constitution, which came into effect 2000. National fundamental rights, as well as human rights, were given a key role. The basic values for the Constitution are now explicitly found in section 1, subsection 2 of the Constitution - the aim of the Constitution is to "guarantee the inviolability of human dignity…..and the rights of the individual." According to section 22 "The public authorities shall guarantee the observance of basic rights and liberties and human rights." There is no doubt about the intention of the Constitution. Basic rights and human rights are intended to be materially implemented.[3] This means that when interpreting national human rights, there is also a duty to eliminate possible conflicts between national fundamental rights and human rights. Human rights standards serve as minimum standards in the interpretation of national fundamental rights.[4]

This is also clear from section 106 in the Constitution, which is entitled "Primacy of Constitution". It states that; "If, in a matter being tried by a court of law, the application of an act would be in *evident* conflict with the Constitution, the court of law shall give primacy to the provision in the *Constitution*." For provisions of lower level than an act, the duty to ignore provisions in conflict with the Constitution is enlarged to all public authorities. As well, there is no restriction that the conflict shall be "evident" before such provisions shall be ignored. A form of "backup" is also offered in section 21 in the Constitution. This section establishes a very essential principle; the principle that, if there is an individual right, there is also a remedy to get the case "dealt with appropriately and without delay by a legally competent court of law". This principle is based on the same elements as article 6, the fair trial article, in the European Convention of Human Rights. The constitutional section can be directly implemented even if this right is not specifically mentioned in the implemented act.[5]

2. THE INDIVIDUAL RIGHT TO HOUSING FOR HOMELESS GROUPS

Housing rights, as a part of larger fundamental social rights, are now found in section 19 of the Finnish Constitution. According to subsection 1; "Those who cannot obtain the means necessary for a life in dignity have the right to receive indispensable substance and care." This provision includes a right to accommodation (housing) *if life or health is in danger without arranged accommodation.* This is an individual right.[6] Due to this fact, this right also has the status mentioned in chapter 1 above.

My research approach to the right to housing is based on a homelessness perspective. It is therefore essential for me to know which groups in Finland are homeless today. Overall homelessness is not a large problem in Finland, when comparing the situation to many other European countries. The number of homeless *single persons* is about 8.000 individuals. In addition, there are some hundred homeless *families*. Not all of these people are sleeping outdoors. Many have the temporary possibility to live with friends or relatives. Some of them are still in hospitals, although they are no longer in need of treatment.[7]

The large groups, for which the individual right to housing has possible relevance are:

1. Persons with mental health problems,
2. Persons with substance abuse problems,
3. Groups with two or more diagnosed problems. For many in this group at least one of the above mentioned diagnoses is included, but is not severe enough to be interpreted as meeting the requirements for the individual right to housing. Young persons and women are rapidly forming growing groups among in this area.
4. Immigrants with families.

3. RELEVANT GUIDING PRINCIPLES WHEN INTERPRETING THE INDIVIDUAL RIGHT

Some guiding principles are essential when interpreting an individual right in Finland. Some of these can be found from human rights law. For example, one such principle can be picked from the Maastricht guidelines, where violations against ESC-rights are defined. "The active denial of ESC-rights to particular individuals or groups, whether through legislated or enforced legislation" is a violation, if it not is based on objective grounds.[8] The reason is, of course, simple. It is a form of discrimination. Human rights also have a "core content", which according to the Finnish national Constitution, must *not* be violated (§§ 22 and 106-107).

In Finnish national social law there is also an important principle, *the principle of need,* which should be respected in all social law. In social law, *general* services also take *precedence over servicse admitted by special law.* The Social Welfare Act (710/1982), which is a general law, includes information about "housing services" as "social service" (§§ 17 and 22-23). There are two types of housing service; "service housing"

The number of homeless single persons is about 8.000 individuals. In addition, there are some hundred homeless families.

1 Email : janhel@uwasa.fi

2 RP 309/1993 p. 16-17 and 20.

3 Viljanen 2001 p. 7 and Suksi 2002 p. 130.

4 Viljanen 2001 p. 268, 271 and 280-281. Helenelund (2006) p. 68-69.

5 Grundlagsutskottets betänkande 25/1994 p. 10-11 and RP 309/1993 p. 73-74 and 77-79.

6 RP 309/1993 p. 73-74.

7 Helenelund 2006 p. 9 and 14-18.

8 Langford and Nolan (2006) p. 22.

and "supported accommodation". The provision stating who has the right to "housing service" is really not very precise. According to 17 § "Housing services are provided in the case of persons who, for special reasons, need help and support with supporting their living conditions."

4. INDIVIDUAL ENFORCEABILITY OF HOUSING RIGHTS FOR HOMELESS GROUPS

Mental health patients is one group with a law-based individual right to housing service. The actual interpretation of this provision in the Mental Health Act (710/1990), 5.2 §, is that this individual right is only for patients with long term mental health problems. It is also put into practise through the Disability Act (759/1987).

A more problematic population group is those with substance abuse problems. According to the national Substance Abuse Care Act (41/1986) *normal housing policy* is the main method to arrange housing even for those with severe substance abuse problems. If there is a local need for it, service houses and supported accommodation also have to be arranged especially for substance abusers. Night shelters can be arranged for short-term acute need. Nevertheless, night shelters have been used for *long-term* accommodation.

The conclusion that such accommodation should be only for short-term use is also based on the human rights system. The supervising body for the international covenant on economic, social and cultural rights has in its General Comment no 4 stated that housing shall *not be narrowly interpreted.*[9] The European Committee on Social Rights has also explicitly noted that shelters do *not* constitute the acceptable housing standard which is demanded in the European Social Charter article 31.[10] The same body has also expressed that keeping persons marginalized is, according to Article 30 in the European Social Charter, a violation of human dignity.[11]

Conclusions like these from the authoritative supervising bodies for Human Rights Treaties are also important for national enforceability of the individual right to housing, thanks to section 22 of the Finnish Constitution. This argumentation cannot be used only for substance abusers. It can also be used when discussing doubly and multi diagnosed persons. In some cases the homeless do not have final diagnoses, because they do not consider themselves ill. But there should be some form of objective material supporting the inability to arrange their own accommodation to have the possibility to enforce the individual right to housing.

Among those who are homeless in Finland it is also possible to argue that homeless immigrants with families have an individual right to housing. This is especially the case if there are children in the family. The Child Welfare Act (683/1983) 13 § demands that the Social Authority provide housing according to need if a child's welfare is in danger. The Finnish Constitution 6 § does not allow any discrimination due to origin. The European Social Charter Article 19.4c also demands that workers have the same rights as nationals regarding accommodation.

The entire picture is that there are groups among those currently homeless in Finland for which it can be argued that they have an individual right to housing. When litigating such cases one can also rely on the domestic Constitution and domestic acts and on human rights sources. One reason why such cases are very difficult to find is that these are very vulnerable groups without their own resources. The only cases that can be found are from the Parliamentary Ombudsman, who in two cases has noted, that the arranged accommodation violates the right to accommodation.[12] In a third case the same authority noticed that there was a violation of the right to equality, when an application for an apartment was denied a Romani family on the ground that the local authority considered that the family could become a disturbing element in its environment.[13]

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10 Kenna 2006 s. 43.
11 Kenna 2006 s. 40.
12 Eduskunnan oikeusasiamiehen kertomus toiminnastaan vuonna 2001 p. 171-173 and 182-184.
13 A decision from the Parliamentary Ombudsman the 5th of May 1998, Application dno 1587/1996.

New Elements in the Homeless Strategy of Finland

By **Peter Fredriksson**[1], *Senior Adviser, Ministry of the Environment, Finland*

Prime Minister Matti Vanhanen's second cabinet launched in February a new Government Programme to halve long-term homelessness by 2011 and to end it by 2015.

According to a housing market report by the Housing Fund of Finland, in November 2007 there were approximately 7,300 homeless individuals and around 300 homeless families in the country. Previous homelessness reduction programmes had succeeded in cutting the number of individual homeless people from around 10,000 (in 2001) to some 7,500 (in 2006). However, it has not been possible to further reduce the number of long-term homeless people.

Long-term homeless people constitute a group of persons whose homelessness is classed as prolonged or chronic, or threatens to be that way, because conventional housing solutions fail with this group and there is an inadequate supply of solutions which meet individual needs. It has been estimated that around a third of homeless people are long-term homeless, i.e. approximately 2,500, of whom 2,000 or so live in the Helsinki Metropolitan Area.

PREPARATIONS

Background work for the new programme was prepared by a "group of wise men".[2] The group's report ('Name on the Door') proposed some basic principles and key ethical, legal and socio-economic reasons for reducing homelessness.

HOUSING FIRST

The programme is structured around the 'housing first' principle. Solutions to social and health problems cannot be a condition for organising accommodation: on the contrary, accommodation is a requirement which also allows other problems of people who have been homeless to be solved. Having somewhere to live makes it possible to strengthen life management skills and is conducive to purposeful activity.

If accommodation is to be organised for the long-term homeless there will need to more precisely targeted, individually tailored solutions, far more dedicated support than before, rehabilitation, and monitoring and supervision. Aside from housing, in many cases there will be a need for long-term support for a programme of comprehensive reconstruction, i.e. a return to normality.

FUNDING

Because of the higher than average costs of such projects, it is crucially important to have state funding for the projects included in the programme. Up to 50 % investment grants will be channelled into the projects in the period 2008–2011.

As a totally new element in the homeless strategies, The Ministry of Social Affairs and Health will finance the production of support services for new serviced accommodation units under the programme. This is to be done in such a way that projects undertaken as the cities' own or outsourced services receive state funds to the tune of 50% of these salary costs. The proposed funding model will at the same time spread the costs associated with homelessness by allocating assistance to those cities with a large number of long-term homeless people and which are actively implementing corrective measures.

PARTNERSHIP BETWEEN GOVERNMENT AND CITIES

The cities involved in implementing the programme have to draw up plans of execution for reducing long-term homelessness. The plans have to specify the need for housing solutions and support and preventive action and to identify and schedule projects and other measures. The plans should cover use of the stock of social rented accommodation to assist the homeless.

In the beginning of this autumn letters of intent were drawn up between the Government and the cities. The letter of intent specifies the contribution the state makes to funding. The role of the cities will be to ensure that an adequate number of projects start up in accordance with the programme's goals.

ABOLISHING NIGHT-SHELTERS AND HOSTELS

Accommodation in night-shelters and hostels originally deemed temporary has become a permanent solution for many homeless people. The units therefore maintain the stigma associated with the homelessness subculture, which does little to promote the rehabilitation of the long-term homeless and help them adjust to independent living. The use of this kind of accommodation will be abandoned gradually, systematically and in a controlled way, so that whenever a home ceases to function as such, replace-

1 Email: peter.fredriksson@ymparisto.fi

2 This group was composed of: the Director of Helsinki City Social Department, Mr. Paavo Voutilainen (Chairman), Bishop Eero Huovinen, Doctor Ilkka Taipale and Hannu Puttonen, Director of the Y Foundation and President of FEANTSA.

ment accommodation will be found for all clients as a guarantee. According to the programme, the organisations concerned receive an investment grant from the Finnish Slot Machine Association (comparable to lottery money in the UK) for basic renovations of hostels and night-shelters.

CONCEPT COMPETITION

Government and the cities of Helsinki, Espoo and Tampere will hold a national concept competition in order to establish new types of accommodation units and services for the long-term homeless. The cities will reserve the necessary construction sites and/or properties for the competition. The aim of the competition is to find solution-based concepts for housing, services and the environment in which housing, care and rehabilitation are better integrated and there is more effective planning and use of space based on flexibility. The aim is to establish housing service units where demanding and specific applications can be incorporated into universally suitable space solutions.

MAIN IMPACT OF THE PROGRAMME

The programme will help achieve considerable savings in the direct and indirect costs of homelessness. The costs of substance abuse problems, mental illness and the cycle of institutional care connected with long-term homelessness can be significantly reduced by opting for more intensive, tailor-made, rehabilitative and non-institutional housing and service solutions.

There will be direct cost benefits for the housing advisory services owing to fewer cases of eviction and rent arrears. Direct savings will be made in subsistence allowances and housing benefits resulting from homelessness.

Awaiting the Spanish miracle: Reflections regarding the United Nations report visit

By **Guillem Fernàndez**[1], *Economist, Associació ProHabitatge*

The UN Special Rapporteur on adequate housing, Mr. Miloon Kothari, visited Spain in November of 2006 as a guest of the Spanish Government. The function of Special Rapporteur on the right to adequate housing was created as a result of Resolution 2000/9 by the United Nations Commission on Human Rights. The mandate of the Special Rapporteur focuses on evaluating the right to adequate housing as part of the right to an adequate standard of living as reflected in Article 25 of the United Nations Universal Declaration and in Article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)[2].

The ICESCR, and the obligations it entails, entered into force in Spain on 27 July 1977. In addition, Spain has ratified other international mechanisms that contain provisions regarding housing, like the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (Arts. 13 and 14.2), the 1989 Convention on the Rights of the Child (Art. 27.3) and the 1965 Convention on the Elimination of All Forms of Racial Discrimination (Art. 5.e). Article 47 of the Spanish Constitution (SC) of 1978 refers very particularly to the right to decent, adequate housing:

"All Spaniards have the right to enjoy decent and adequate housing. The authorities shall promote the necessary conditions and establish appropriate standards in order to give effect to this right, regulating land use in accordance with the general interest in order to prevent speculation. The community shall have a share in the benefits accruing from the town-planning policies of public bodies"

WHAT DOES THE REPORT SAY?

Paradoxical to the potential of Article 47, the conclusions of the United Nations Rapporteur 30 years later are alarming. The following issues related to the violation of the right to housing were raised:

- ***Vacant dwellings***

  The number of dwellings built has exceeded 600,000 units per year since 2001, reaching 800,000 units in 2005. This figure equals those of France, Germany and the UK combined. But in addition to this chilling figure, it must be noted that the official number of vacant dwellings in Spain reached 3,091,596 in 2001, 25.5% more than in 1991.

- ***Shortage of social housing, particularly rental housing***

  At the start of the 21st century, social housing for rent accounted for barely 6.3% of all residences, compared to the European average of 13.7%[3].

- ***Affordability***

  Housing prices rose 202% between 1995 and 2007. However, this increase was not matched by the population's income growth[4]. Housing prices are estimated to have risen 86.4% from 1997 to 2002, while wages increased only 15%.

The report highlights the following specific problems:

- ***Speculation***

  According to the Bank of Spain, land prices rose 500% and housing prices rose 150% between 1998 and 2005. Moreover, the implementation of the euro made it easier to launder money through the construction industry.

- ***Corruption***

  The report indicates that the lack of resources of local authorities contributed to the use of rezoning as a source of funding for political parties. It also notes that some politicians and civil servants took advantage of this situation for their own personal benefit.

- ***Housing harassment***

  This phenomenon affects, amongst others, tenants living in dwellings subject to old rental agreements (which establish the undefined duration of the agreement at prices considerably below market prices) or tenants of dwellings that may be subject to a change of use (hotels, offices, etc.).

In this context, the groups most affected by housing policy in the last 30 years have been women, young people, the elderly, the disabled, Roma, immigrants and homeless people. Official estimates place 21,900 people in the latter group. In addition, 2001 census data indicate that in Spain there are 112,824 people with no running water in their homes, 13,002 people living in buildings that are in a ruinous condition, 13,660 in deficient conditions, and 25,839 in poor conditions[5].

The report by the United Nations Special Rapporteur paints a bleak picture, which reveals that we have failed to meet the three clear positive mandates[6] stemming from Article 47 of the SC: namely, to protect, promote and ensure the right to housing. Nor have we fulfilled the negative mandate of not violating this right, basically because we have failed to promote the "necessary conditions" or the "relevant regulations", nor have we avoided "speculation". All told, these factors have made it difficult to make the right to decent and adequate housing a reality for a large part

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1 Email: gfernandez@prohabitatge.org

2 Derecho a la Vivienda y políticas habitacionales. Informe de un desencuentro. Observatori DESC. January 2008

3 Derecho a la Vivienda y políticas habitacionales. Informe de un desencuentro. Observatori DESC. January 2008

4 Derecho a la Vivienda y políticas habitacionales. Informe de un desencuentro. Observatori DESC. January 2008

5 http://www.feantsa.org/files/national_reports/spain/statistics_report_spain_2006.pdf

6 Juli Ponce, Prologue Spanish version. *Housing Rights and Human Rights*, Padraic Kenna. Associació ProHabitatge, June 2006.

of the population. This is not solely the responsibility of the Government, since the Spanish state is a decentralised state with 17 Autonomous Communities and 8,000 municipalities with competencies that have a direct influence on housing policy according to Articles 148 and 149 of the SC.

FUTURE PROSPECTS

Such is the balance with the United Nations mandate regarding the right to housing after 30 years of democracy in Spain. What does the future hold in store? The report by the United Nations Special Rapporteur cites the new Land Law 8/2007 by the central government and the recent approval of the Technical Building Code concerning renewable energies as examples of good practices. Moreover, the Ministry of Housing is currently making changes to the Horizontal Property Law, the Code of Civil Procedure, and the Urban Leasing Law. One of the objectives is to expedite legal eviction proceedings as an argument to spur the rental market, but we hope that the Government will develop more preventative policies. We must also state that successive Spanish governments have failed to ratify the 1996 Revised European Social Charter, and they have not signed and ratified the Additional Protocol of 1995 establishing the system that provides for collective complaints. This is a hindrance to improving the effective application of the right to housing. Gaining greater European commitment in social matters is one of the Spanish executive branch's main "unfinished tasks".

The Special Rapporteur also cites experiences in the Basque Country and Catalonia as good practices. These Autonomous Communities show us two different strategies that seek to achieve the same right. In the Basque Country, the new draft housing law has chosen the Scottish way, which calls for ensuring the rights of its citizens by law to housing by 2012. However, it appears that the initiative has not achieved sufficient political consensus for now. For its part, Catalonia approved the Housing Rights Law 18/2007, which does not acknowledge the enforceability of the right to housing by the courts, but has been combined at the political level with the 2007-2016 National Housing Pact with developers, professional associations, political parties and social institutions in a bid to meet the objectives achieving the greatest possible consensus. This law features measures such as Title V, "On public housing protection policy," based on the French *Solidarité et Rénouvellement Urbain* 2000 (SRU) Law, and Title IV, "On protecting consumers and users of housing," Article 45 of which transposes the European Anti-discrimination Directives, thus linking civil and political rights to economic, social and cultural ones. In this way, *"All persons must be able to have access to a dwelling and occupy it, provided that they meet the legal and contractual requirements applicable to every legal relationship, without being subject to discrimination, either direct or indirect, or harassment."* Harassment is understood to mean *"any action or omission involving the abuse of law whose objective is to disrupt harassed persons in their peaceful use of their dwellings and to create a hostile environment against them, in material, personal or social terms, with the ultimate goal of forcing them to make a decision against their wishes with regard to the right to occupy the dwelling to which they are entitled. For the purpose of the present law, housing harassment constitutes discrimination. The unjustified refusal of a dwelling's owners to collect rent is a sign of housing harassment."*

Thus, these two Autonomous Communities may be viewed as being at the forefront in legal terms when it comes to housing rights in Spain. But all of us are aware that in order to make a law effective, a budget is needed to enable its development and political will is even more vital. We are now coming to the end of what has been called the "Spanish Miracle." Spanish growth has rested on two pillars over the last decade: the construction industry and domestic consumption. Clear signs of a cooling off of domestic consumption and loss of investment are being shown in 2008, particularly in construction, and more specifically in housing construction. According to the Euroconstruct[7] group, forecasts for 2008 and 2009 show a lengthening of the "readjustment" with a fall in production of at least 15% (a large stock of dwellings for sale, but scant inclination by banks to finance house buying, and growing unemployment). For now, the construction industry is resisting major housing price cuts which, according to various agencies, should range from 20% to 30% over the next 4 years[8]. For their part, government administrations will suffer greatly, as 10% of total government revenues comes from real-estate transactions and 22% of the resources of local governments is linked to these transactions[9].

This context calls for deep reflection at the political and professional level on why poverty has not declined during the period of economic growth, and still remains at about 19.9% of the total population. Where have we gone wrong?

In order for the right to housing to become a reality, more government intervention is needed, and above all, it is necessary to reformulate housing policy with a new, more general study framework, as it is affected by aspects such as the property rights regime, housing finance regime, residential infrastructure regime, regulatory regime, and housing subsidies/public housing regime.[10] To paraphrase Einstein: *"If you want different results, don't keep doing the same things over and over again."* Meanwhile, there are people who will still be waiting for a miracle to happen.

7 Euroconstruct Report, July 2008.
8 An adverse global scenario intensifies the slowdown of the Spanish economy, José Luis Escrivá, BBVA Study Service, July 2008
9 Public Housing Policy, Miguel Angel Cancelo. Basque Government. 31 May 2008. Seminar: How to Secure Decent Housing?
10 *Housing Law and Policy in Ireland*, Padraic Kenna, Clarus Press, April 2006

Jurislogement: a multidisciplinary network for the right to housing

By **Noria Derdek**[1], *Legal Officer, Fapil, France*

A series of factors led to the setting up of a national network of lawyers. Homeless service users are all beset by problems that may end up in their becoming homeless or stop them getting appropriate housing. These difficulties can be legally resolved because these service users are all, in one way or another eligible for certain, connected rights, such as: the right to benefits that gives a family a steady income; the right to papers that will help get an individual's administrative and hence financial situation back on track; rights directly linked to housing i.e. the right of the use of premises against an underhand owner, the right to housing under the new French statutory procedure, and so on. This makes it essential for voluntary groups to know the provisions of law so they can properly inform people, and also ally with legal expertise to stand up for those who are temporarily powerless. It is a fact that voluntary organizations increasingly have in-house lawyers, but they often work alone, are not fully abreast of current case law, and lack the organization to work together coherently and engage major proceedings.

Also, voluntary group lawyers do not always have good links with the private practice lawyers and justice administration system officials concerned with the same issues, who themselves have information gaps due simply to the range of issues they have to deal with. They also need shared information and analysis. Finally, those with time for reflective thought - academic lawyers - also have few links with civil society and find it hard to put their expertise into courtroom practice. It is these three dispersed groups – the voluntary, the judicial and the academic - that need to be linked up.

Housing is a sphere that calls on very wide-ranging knowledge. Every situation has to be resolved, however unique. The issues involved include: leave to remain, town planning, health, building standards, tenant evictions, landlord and tenant disputes, access to rights, social security benefits, etc. The list is endless!

There is no pat legal answer to the particularly complex situations that people find themselves in. We are increasingly less in ordinary law, and more often on the fringes where the rules are more tenuous and uncertain. Knowledge of the proliferating laws is essential, but must then be put together in often very original ways, with a human rights approach aimed at making them workable in practice. This approach produces credible results which must then be validated by a court to turn them into law, giving them a firmer foundation and better promotion.

The law therefore has to be worked on unless we are content to be managers or observers of illegality and injustice. Law must be used because it is key: it is in law that a fair distribution of goods and hence housing in society can be claimed and allocated. Legal action, therefore, has the clinching role.

Jurislogement is based on these conclusions, because no-one can go it alone. "*Jurislogement is the product of a link-up between professional lawyers who believe that the right to housing cannot be properly implemented without legal research. Given the host of legal issues involved in housing, they have decided to share their knowledge in the fields of housing, shelter, health, discrimination, the law on foreign nationals, etc. Jurislogement is a forum for exchange on, and the development of, law to promote housing as a human right*."

The project emerged in 2006 when we thought of linking up to exchange ideas and take action, share our experiences and thoughts and cases won in order to leverage legal proceedings. The idea was quickly turned into reality, not to mention that its members were delighted to meet up with others who "spoke the same language." Benefiting from others' experience already held great appeal. Everyone also brought proposals and issues on which a concerted and stronger effort is needed.

Jurislogement has ambitious aims: to improve the knowledge and use of the array of legal provisions applicable to housing issues. That is why it was formed with a membership drawn deliberately from a range of backgrounds. The 22 members, mostly voluntary organisation lawyers, work in advocacy organisations, intake and information agencies, support groups, shelter and housing management associations, support groups for foreign national and for the infirm. The network can also draw on one lawyer who works for the HALDE[2], another from ANIL[3], a former judge and private practice lawyers. Our individual concerns form the basis for exchanging our knowledge and expertise.

The network meets about once every three months and corresponds by email. A well-packed work programme, members' contributions and broad guidelines have been developed through working sessions. The first job done is to clarify the rules and their practice, then to assess where they do not match people's practical problems. This can be done in a report or critique. The information collected in this way is posted on an open-access website (www.jurislogement.org is under construction and will go live this autumn). The site will be the key tool and interface for the network's future initiatives.

We then move into an in-depth study and exploratory thought around problems in a search for possible answers that will also be widely shared. This ranges from comment on legal topics (research on property law, etc.) to practice notes (compiling legal aid application files, responding to a property sale notice to quit, etc.). An extensive body of case law is referenced, to make the website a real resource. However, in order to save time, we have agreed not to reproduce existing information but to exchange and refer back to it.

Jurislogement has ambitious aims: to improve the knowledge and use of the array of legal provisions applicable to housing issues.

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2 Anti-discrimination and pro-equality institution

3 National housing information agency

It was also decided early on to focus our meetings on preset topics. One, suggested by the non-legal staff of a member association who wanted a better understanding of the law and to discuss case histories of their clients, was on furnished lettings and low-cost residential hotels. The meeting was held with outside participants, lawyers and professionals who have to deal with these things on a daily basis.

Another meeting focused on on-call eviction help desks to compare and contrast organization, practice and results of existing legal help desks in Paris, Lyon, Marseilles and Montpellier. A number of lawyers working in partnership with voluntarily staffed help desks were there. A regular stocktaking and local meetings will be planned on this extremely worthwhile tool for preventing evictions which needs to be further promoted.

A meeting on discrimination, a core issue in housing matters, has been scheduled, and the network has an immense resource of expertise in HALDE.

With this mixed profile, *Jurislogement* is furthering its aim to inform and bring two communities - the legal and the voluntary - together. One way is by explaining to the judiciary the practical consequences of a procedure and their decisions, something we are planning to do towards the administrative judiciary, recently invested with new powers on the right to housing litigation[4], and the civil judiciary on preventing tenant evictions. The network also aims to expand its membership to include judges' and lawyers' unions, real allies whom we really need to have onside. They can act as advocates for our ideas and our interpretations of the law to the judiciary.

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The network has an ambitious work programme that reflects the importance of housing rights and their ramifications. It shows the need and scale of the work that *Jurislogement* is proposing to do. We hope it also reflects its intended permanency. The programme covers landlords' practices, tenant evictions, disputes between neighbours, the concept of legal address, squatters, shelter users and the law, the link between housing and health, discrimination, access to legal aid, what local government is doing about fundamental rights, the social rights attached to leave to remain, property law, etc.

Some articles are already available: "Evictions after a property sale notice to quit", "Unfit housing and criminal offences", "Squatters' rights", "Is home ownership addressed in European law?" etc.

The network is in it for the long haul. Its influence and effectiveness will be proven by time and the rigor of its work. All the people involved have stressed this as a practical expectation in their relations with vulnerable individuals, and getting the law more widely known helps to harmonize it in order to bring legal certainty for these people.

Two projects are in the works, more light-hearted, but still with the serious aim of awareness-raising:

- "DALO[5] blunders": a collection of bungling State responses to recognized "priority" families' applications for housing under the DALO procedure. Members called this to the network's attention, because allocating appropriate housing is what puts the right to housing into practical effect.

- "Golden trowels": research is being done into innovative European laws and policies on housing. Some will be selected and put to an online vote on the website. A public prize-giving ceremony will be then organized.

This latter project revealed a weakness in the network: a lack of knowledge and exchange at the European and international level. It is important to know what exists elsewhere. France does not stand alone in a vacuum, nor does the housing shortage. The EU's powers are increasingly making an impact on French legislation. European and international treaties are key foundations for our activity, offering remedies and a body of case law that open new possibilities. Many concepts stand in need of definitions, and we can influence these. Good law, and good experiences, must give a lead to other countries.

To ease exchange of information at European level, *Jurislogement* is working together with FEANTSA to set up an international network called Housing Rights Watch. It will be launched in the autumn of 2008, and all offers of help are welcome.

4 Act No. 2007-290 of 5 March 2007 establishing an enforceable right to housing and enacting miscellaneous measures in favour of social cohesion, http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000271094&dateTexte=

5 The enforceable right to housing

Notes

Notes

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This programme was established to financially support the implementation of the objectives of the European Union in the employment and social affairs area, as set out in the Social Agenda, and thereby contribute to the achievement of the Lisbon Strategy goals in these fields.
The seven-year Programme targets all stakeholders who can help shape the development of appropriate and effective employment and social legislation and policies, across the EU-27, EFTA and EU candidate and pre-candidate countries.
To that effect, PROGRESS purports at:

- providing analysis and policy advice on employment, social solidarity and gender equality policy areas;
- monitoring and reporting on the implementation of EU legislation and policies in employment, social solidarity and gender equality policy areas;
- promoting policy transfer, learning and support among Member States on EU objectives and priorities; and
- relaying the views of the stakeholders and society at large.

For more information see:
http://ec.europa.eu/employment_social/progress/index_en.html

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