European contribution to the right to housing: Standards, Litigation & Advocacy

Summary of the seminar. May 16th 2022.



On May 16 The [Fondation Abbé Pierre](https://www.fondation-abbe-pierre.fr/) and [FEANTSA/](https://www.feantsa.org/en/resources/resources-database?theme=housing+as+a+human+right) Housing Rights Watch organised a joint seminar on the "European contribution to the right to housing: Standards, Litigation & Advocacy" in Brussels. It was a long awaited in-person event with over 70 participants and speakers from over 9 European countries.

The objectives of the seminar were to disseminate the housing related binding obligations, to discuss their scope, their limits, and the means to strengthen them or create new ones, how to integrate them into the advocacy work of housing rights advocates and to discuss how to use them in legal proceedings to ensure that they have a practical effect for the direct benefit of people experiencing homelessness and inadequately housed people.

The president of FEANTSA, Kjell Larsson, opened the seminar with a speech focusing on the key role that human rights law has in fighting homelessness and how housing rights advocates themselves needs to continue to be trained, equipped and mobilized in housing rights and in order to use this essential tool in the best way:

*“We must develop legal knowledge to strengthen the right to housing, directly or indirectly, involving researchers and practitioners in our reflections; influence the legal and regulatory framework and participate in the transformation of public policies; and act in justice to enforce the law and resolve individual situations, but also have a collective aim in our resources, to act not only in defense but also in the vindication of rights.”*

The obligations of Member States in relation to the right to housing through European case law

**Did you say "binding obligations?"**

Maria Jose Aldanas, coordinator of Housing Rights Watch and policy officer at FEANTSA presented [FEANTSA](https://twitter.com/FEANTSA)´s and Fondation Abbe Pierre´s updated version of *Binding Obligations*- a guide which includes the minimum standards that governments must respect when implementing the right to housing. Find the publication here and her presentation [here.](https://www.housingrightswatch.org/sites/default/files/Binding%20Obligations%20related%20to%20Housing_Maria_%20Aldanas_16th%20May.pptx_.pdf).

**Dialogue with judges**

At our dialogue with Giuseppe Palmisano, former President and current General Rapporteur of the ECSR, Lucia Serena Rossi, judge at the Court of Justice of the European Union and Paulo Pinto de Albuquerque, judge at the ECHR from 2011 to 2020, Professor at the Catholic University, discussed binding obligations related to housing from European and International case-law, the intended scope of positive obligations and possibility of developing new obligations in the area of housing, considering previous decision and the notion of positive obligation and its importance for the effective realization of the right to housing.

**Giuseppe Palmisano, former President and current General Rapporteur of the ECSR**

Judge Palmisano pointed out that the revised Social charter is the only European legal instrument which guarantees and regulates in a comprehensive manner, in Article 31, the right to housing. However, it is not yet widely accepted at European level and only a hand full are obliged to respect this article. But he argued further that in addition to article 31, states must also take into account Article 16 of the ECSR, on the right of the family to social, legal and economic protection. According to which the States Parties are obliged to provide housing of an adequate standard for families; to take account of the needs of families in housing policies; and to ensure that existing housing is of a satisfactory standard, is provided with all essential amenities. He referred to the committee's decision in FIDH v. Ireland:

*"The fact that the right to housing is set out in Article 31 of the Charter does not preclude relevant housing issues from being considered under Article 16 which deals with housing as part of the right of families to social, legal and economic protection*[*”*](https://hudoc.esc.coe.int/fre/#{%22sort%22:[%22ESCPublicationDate%20Descending%22],%22ESCDcIdentifier%22:[%22cc-110-2014-dmerits-en%22]})*[[1]](#footnote-1)*

He also highlighted the usefulness of the collective complaint procedures and encouraged the audience of organized and committed civil society to make full use of this instrument and call European states to account for their housing responsibilities. He stated that around a dozen decisions on the merits adopted by the ECSR in the last 20 years have concerned the right to housing, which is mainly thanks to the activism and crucial role played by civil society organizations, referring to FEANTSA´s work among others.

**Paulo Pinto de Albuquerque, judge at the ECHR from 2011 to 2020**

In his speech, Judge Pinto de Albuquerque argued that the European Court of Human Rights has often missed the opportunity to recognise the right to housing andthat this inconsistency is not good for the credibility of the court. He pointed out that one reason for the lack of bold statements on the right to housing could be that the court risk getting blamed by governments for being too active in its role. He calls for a social and economic rights-friendly reading of the convention, referring to Demir & Baykara v Turkey 2008[[2]](#footnote-2) among other judgments, where the court made a progressive, social reading of the convention. He argued that today the court has neglected the legacy of these cases and hopes to see a more progressive reading of the convention in the future, where states obligations under social rights such as the right to housing can be read into the convention.

**Lucia Serena Rossi, judge at the Court of Justice of the European Union**

Judge Serena Rossi discussed the competence of the EU on the right to housing. She argued that there are still several tools at EU level which relate in one way or another to the right to housing, even if is not a EU competence. In the European charter of fundamental rights there is a reference to the right to housing assistance in Article 34(3), which deals with social assistance in order to ensure a dignified existence for those who do not have sufficient resources and has been signed by all member states. She concluded that even though the right to housing is not an EU competence at the moment, it is not excluded that it could become a competence of the EU in the future.

Implementing positive obligations: the responsibility of public authorities- Using environmental litigation as a model for housing rights

Innovative and proactive litigation has emerged in recent years in several European countries in environmental and climate change matters. These lawsuits are directed against public authorities to force them to act, to strengthen or correct their action. We invited Marine Yzquierdo, lawyer, member of Notre Affaire à Tous and Delphine Misonne, professor of law at the University of Saint-Louis, as well as Nicolas Bernard, professor of Law at the University of Saint-Louis and Koldo Casla Lecturer at the School of Law & Human Rights Centre at University of Essex, to discuss how climate change and environmental litigation can be used as a model for housing rights advocates.

The panellists all argued that there are significant differences between climate change and housing that one should bear in mind, making it difficult to replicate. Somee essential differences are the sense of urgency that climate change has behind it and the lack of benchmarks for housing, with no agreed upon spending and new social houses etcetera, whereas for climate there are certain agreed upon global standards. However, there is still a lot of similarities. One of them being that the rights are interdependent - a healthy environment affects the right to home and housing has an impact on health. In both cases prevention is the better option. There is also a need for more data, statistics, lived experience and active participation in the collection of qualitative data in both cases. NGOs are pioneers within climate change litigation, and the same could be said about housing rights. Energy supply and energy sources is another clear link between housing and climate. Buildings and housing occupy an increasing place in environmental policies, both mitigation and adaptation to climate change.

Workshops

We devoted some time to three different subjects that are important in the problems of housing and the solutions to be brought in three workshops on: the principle of proportionality, the control of the housing markets, the energy efficiency of housing combined with the right to a minimum energy service for its subsistence.

**1. Loss of home: what are the requirements of the principle of proportionality?**

Facilitation: **Padraic Kenna,** director of the Centre for Housing Law, Rights and Policy, NUI Galway, Ireland. Find his presentation [here.](http://housingrightswatch.org/sites/default/files/HRW%20Brussels%20May%202022%20PK.pptx__0.pdf)

* The principle of proportionality in the decisions of the ECSR, presented by **Maria Jose Aldanas,**Policy officer at FEANTSA. Find her presentation [here](http://housingrightswatch.org/sites/default/files/HRW%20Brussels%20May%202022%20CESCR%20Javier%20Rubio.pptx_.pdf).
* **Senada Sali,** legal director, ERRC, discussed forced evictions and the principle of proportionality.  Find her presentation [here.](http://housingrightswatch.org/sites/default/files/Presentation_ERRC_forced_evictions_SS.pptx_.pdf)

**2. Controlling property markets against price and rights abuses**

Facilitation: **Marc Uhry**, City of Villeurbanne, France.

* The place of social housing in the market balance, presented by **Virginie Toussain**, legal officer, USH, France. Find her presentation [here.](http://housingrightswatch.org/sites/default/files/16%20mai%2022%20Virginie%20Toussain.pptx_.pdf)
* Rent controls and rental protections was presented by **Max Althoff,**lawyer, Germany. Find his presentation[here.](https://www.rav.de/publikationen/mitteilungen/mitteilung/arbeitskreises-mietrecht-im-rav-bei-kongress-european-contribution-to-the-right-to-housing-standards-litigation-advocacy-863)
* Land tenure regulation in the Netherlands was presented by **Dr Julie Lawson,** Centre for Urban Research, RMIT - AHURI Research Centre. Find her presentation [here.](http://housingrightswatch.org/sites/default/files/FEANTSA%20Land%20Policies%20-%20the%20Netherlands%20Brussels%2016%20May%202022.pptx_.pdf)

**3. Strategy to end fuel poverty**

 Facilitation: **Juan Carlos Benito Sanchez,** human rights researcher and consultant, Brussels, Belgium

* Energy efficiency in housing: update on EU regulations and subsidies and national examples was presented by **Louise Sunderland,** senior advisor to the Regulatory Assistance Project, England. Find her presentation [here.](http://housingrightswatch.org/sites/default/files/Energy%20efficiency%20in%20housing%20Louise%20Sunderland_final.pptx_.pdf)
* The right to energy of the "vulnerable consumer" was presented by **Marlies Hesselman**, senior lecturer in international law, University of Groningen, Netherlands. Find her presentation [here.](http://housingrightswatch.org/sites/default/files/PPT%20Brussels%2016%20May%20-%20Hesselman%20-%20Right%20to%20Energy%20-%20draft%20with%20pointers%20for%20interpreters.pptx_.pdf)
1. https://hudoc.esc.coe.int/fre/#{%22sort%22:[%22ESCPublicationDate%20Descending%22],%22ESCDcIdentifier%22:[%22cc-110-2014-dmerits-en%22]} [↑](#footnote-ref-1)
2. [https://hudoc.echr.coe.int/fre#{%22languageisocode%22:[%22FRE%22],%22appno%22:[%2234503/97%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22],%22itemid%22:[%22001-89555%22]}](https://hudoc.echr.coe.int/fre%22%20%5Cl%20%22%7B%22languageisocode%22%3A%5B%22FRE%22%5D%2C%22appno%22%3A%5B%2234503/97%22%5D%2C%22documentcollectionid2%22%3A%5B%22GRANDCHAMBER%22%5D%2C%22itemid%22%3A%5B%22001-89555%22%5D%7D) [↑](#footnote-ref-2)