

Instruments for Advocacy and Strategic Litigation on Housing Rights in Europe

A HANDBOOK FOR PRACTITIONERS
AND NGOs



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Acknowledgements

Coordination:

Maria José Aldanas

Project Assistance:

Miriam Matthiessen

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The aim of this guide is to bring together legal and practical information on the right to housing from a wide range of sources all in one place. Our hope is that by centralising the various information sources and clarifying the existing structures, processes, and litigation alternatives, we can shed some light on what sometimes appears to be a daunting procedure for non-legal entities.

Nevertheless, given that the handbook is intended for a wide audience and cannot provide specific, case-by-case advice, we would still recommend that you seek out legal expertise in your country prior to engaging in strategic litigation.

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LIST OF ACRONYMS

CESCR	Committee on Economic, Social and Cultural Rights
CFREU	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ESC	European Social Charter
ICESCR	International Covenant on Economic, Social and Cultural Rights
RESC	Revised European Social Charter
TFEU	Treaty on the Functioning of the European Union

INTRODUCTION

Strategic Litigation and Why it Matters for Housing

Strategic litigation is a type of legal action using single cases in court or quasi-judicial bodies in order to highlight a violation of human rights or achieve a specific outcome. The intention is that these legal proceedings will have a positive, broader impact on law and policy, as well as setting a precedent for outcomes in similar cases. Strategic litigation is of special importance in the context of housing. The right to housing is not always explicitly recognised, but rather derived from other rights such as the right to an adequate standard of living. This means that its scope and content is not always clear. To clarify the nature and extent of housing rights obligations FEANTSA and Fondation Abbé Pierre, in 2016, published a compendium on the existing corpus of case law which defines the legal norms related to the right to housing in Europe¹. Though case-by-case changes may seem small and incremental (if respected and implemented at all), together they help paint a picture of the legal standard of housing which States should aim for and which are in fact already accepted at international level. These cases have an additional value where national legislation relating to housing is patchy, incomplete, or non-existent. While the 2016 compendium outlines existing cases, this handbook is intended as a capacity-building tool for non-legal professionals working in the homelessness sector. It seeks to clarify the different options available to challenge housing rights violations, and to encourage ways to contribute to the development of legal norms by engaging in strategic litigation.

About Us

FEANTSA and Fondation Abbé Pierre have, together, used the law to advance housing rights and we believe that advocacy and strategic litigation should be part of the core activities of our joint initiative, the Housing Rights Watch Network - a European network of housing rights experts. Through advocacy and litigation, we aim to develop national law and practices in Europe to bring these closer to international human rights standards.

We aim to advance housing rights in Europe by:

- Raising awareness of housing rights through conferences, reports and online communications
- Providing training and assistance for NGOs and advocates on taking cases
- Engaging directly in advocacy and litigation, especially via the European Social Charter Collective Complaint mechanism

About This Handbook

This handbook is based on a series of discussions within the Housing Rights Watch Network. We hope it will serve as a useful resource for social actors wishing to explore legal pathways for change. The handbook is structured in the following way: Part 1 explains what is involved in taking a rights-based approach to housing and provides an overview of existing legal provisions for the right to housing at both international and European level. Part 2 explains the concept of strategic litigation and how to use available mechanisms in situations of a possible rights violation. Part 3 focuses on additional advocacy tools and relates to ongoing processes and reporting systems which may present advocacy opportunities.

¹ FEANTSA and Fondation Abbé Pierre (2016). Housing-Related Binding Obligations on States from European and International Case Law. Online: <https://www.feantsa.org/download/2016-06-housing-related-binding-obligations6411857525167192995.pdf>

HOUSING RIGHTS: AN INSTITUTIONAL OVERVIEW

1

“The lived experience of homelessness and inadequate housing challenges the very core of what it means to be human, assaulting dignity and threatening life itself. It is these experiences that make homelessness and inadequate housing violations of human rights and not merely programme failures.”

Leilani Farha, UN Special Rapporteur on the Right to Adequate Housing
(2018 Report on Human Rights-Based Housing Strategies)

The Rights-Based Approach to Housing

FEANTSA understands homelessness as a situation that deprives individuals of fundamental rights, particularly the right to housing. This understanding of housing as a human right implies a shift from political choice to legal obligation. This moves the focus from a burden placed on charities and NGOs to provide emergency shelter and other services, towards an insistence on States that they are obliged to respect, fulfil, and protect the rights to which they have accepted under international human rights law. Such an understanding also helps shift the view of homeless people from beneficiaries of government and charitable services to rights holders, whose situation is testament to the shortcomings of their government in achieving the full realization of their citizens' social rights. In addition to this, EU Member States have made the commitment to ensure the right to adequate housing for all as part of both the 2030 Sustainable Development Goals and the New Urban Agenda. What follows in this section is a brief overview of existing legal provisions for the right to housing in a European context.

United Nations

The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic, Social and Cultural Rights (ICESCR)² is the most important instrument at UN level that enshrines the right to housing as a part of the right to an adequate standard of living. Article 11(1) is best understood in the context of Article 2(1), according to which each State Party commits to the progressive realization of the rights recognized by the Covenant *to the maximum of its available resources, and by all appropriate means*:

ICESCR Article 11

1. 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.

² UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, online: <https://www.refworld.org/docid/3ae6b36c0.html>

The **Committee on Economic, Social and Cultural Rights (CESCR)** is an independent expert body appointed to oversee States Parties' implementation of the ICESCR. It consists of 18 independent experts who are nationals of States Parties. The CESCR issues **general comments**, which are authoritative interpretations of the provisions of the Covenant. The Committee has addressed the concept of the right to housing in relation to Article 11 (1) of the Covenant in two of its general comments:

- General Comment No. 4: The Right to Adequate Housing (clarifies the seven elements of adequate housing, see figure 1)³
- General Comment No. 7: The Right to Adequate Housing (provides further detail on forced evictions)⁴

ICESCR Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, **to the maximum of its available resources**, with a view to achieving progressively the full realization of the rights recognized in the present Covenant **by all appropriate means**, including particularly the adoption of legislative measures.

ELEMENTS OF ADEQUATE HOUSING (General Comments No. 4)

LEGAL SECURITY OF TENURE	Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property.
AVAILABILITY OF SERVICES, MATERIALS, FACILITIES AND INFRASTRUCTURE	An adequate house must contain certain facilities essential for health, security, comfort and nutrition.
AFFORDABILITY	Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. The percentage of housing related costs is, in general, commensurate with income levels.
HABITABILITY	Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors.
ACCESSIBILITY	Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources.
LOCATION	Adequate housing must be in a location which allows access to employment options, health-care services, schools, childcare centres and other social facilities.
CULTURAL ADEQUACY	The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing.

³ General Comment No. 4: Article 11 (Right to Adequate Housing), 6th Session (1991), online: <https://www.refworld.org/pdfid/47a7079a1.pdf>

⁴ General Comment No. 7: Article 11 (Right to Adequate Housing), 16th session (1997), online: <https://www.refworld.org/pdfid/47a7079a1.pdf>

Council of Europe

The European Convention on Human Rights

Although the right to housing is not explicitly included in the European Convention on Human Rights (ECHR), it is enshrined in numerous concrete legal norms which are relevant in the fight against homelessness and housing exclusion such as the right to life (Article 2), the prohibition of torture or inhuman or degrading treatment (Article 3), the right to respect for private and family life (Article 8), the prohibition of discrimination (Article 14) and the protection of property (Protocol 1). **The European Court of Human Rights** (ECtHR), based in Strasbourg, makes sure that States Parties respect the rights guaranteed by the European Convention on Human Rights. The Court examines complaints lodged by individuals and States, and its judgements are binding. There are differences between countries depending on whether they have a monist or dualist model to determine the relationship between national and international law⁵.

The European Social Charter

The European Social Charter (ESC) complements the European Convention on Human Rights in the area of economic and social rights. It was adopted in 1961 and revised in 1996. The social rights guaranteed by the Charter relate to housing, health, education, employment, legal and social protection, the movement of persons, and non-discrimination. Importantly, Article 31 is devoted entirely to the right to housing:

Article 31

With a view to ensuring the effective exercise of the right to housing, the Parties undertake 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;
- to make the price of housing accessible to those without adequate resources.

The Charter is based on a “ratification system”, enabling states to choose the provisions they are willing to accept as binding international legal obligations. States ratifying the Charter must undertake to be bound by at least 5 of Articles 1, 5, 6, 12, 13, 16 and 19, and by such a number of Articles or numbered paragraphs, provided that the total number of Articles or paragraphs is not less than 10 Articles or 45 numbered paragraphs of Part II of the Charter. This means that for the remaining articles, States have the option not to sign up to them. As only a few states have signed up to Article 31⁶, Article 16 - the right of the family to social, legal and economic protection - has been used extensively in argumentation for violations of the right to housing under the Charter.

Article 16

The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means.

The Committee has interpreted the family’s right to economic, legal and social protection provided for in Article 16 as guaranteeing the right to adequate housing for families.⁷ The right to housing is of central importance to the family and permits the exercise of many other civil, political, economic, social, and cultural rights.⁸ The European Committee of Social Rights has consistently interpreted that Articles 16 and 31 partly overlap in several areas relating to the right of families to housing. In this respect, both Articles include the notions of adequate housing and forced evictions.

⁵ In a monist legal system, international law is considered part of the internal legal order. In a dualist legal system, international law stands apart from national law, and to have any effect on rights and obligations at the national level, international law needs domestic implementation.

⁶ Chart of signatures and ratifications of the Revised European Social Charter, status as of 13/02/2020: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163/signatures?p_auth=WaUbQZLK

⁷ *Centre on Housing Rights and Evictions (COHRE) v. Croatia*, Complaint No. 52/2008, Council of Europe: European Committee of Social Rights, 22 June 2010, online: https://www.refworld.org/cases/COE/CSR_4cddb5082.html

⁸ UN CESCR General Comment No. 4; Council of Europe, Collective Complaint No. 15/2003 *European Roma Rights Centre (ERRC) v. Greece*, §24

European Union

Although housing and housing rights as such are not formally an EU competence, there are several instruments at EU level that relate in one way or another to the right to housing.

The European Charter of Fundamental Rights

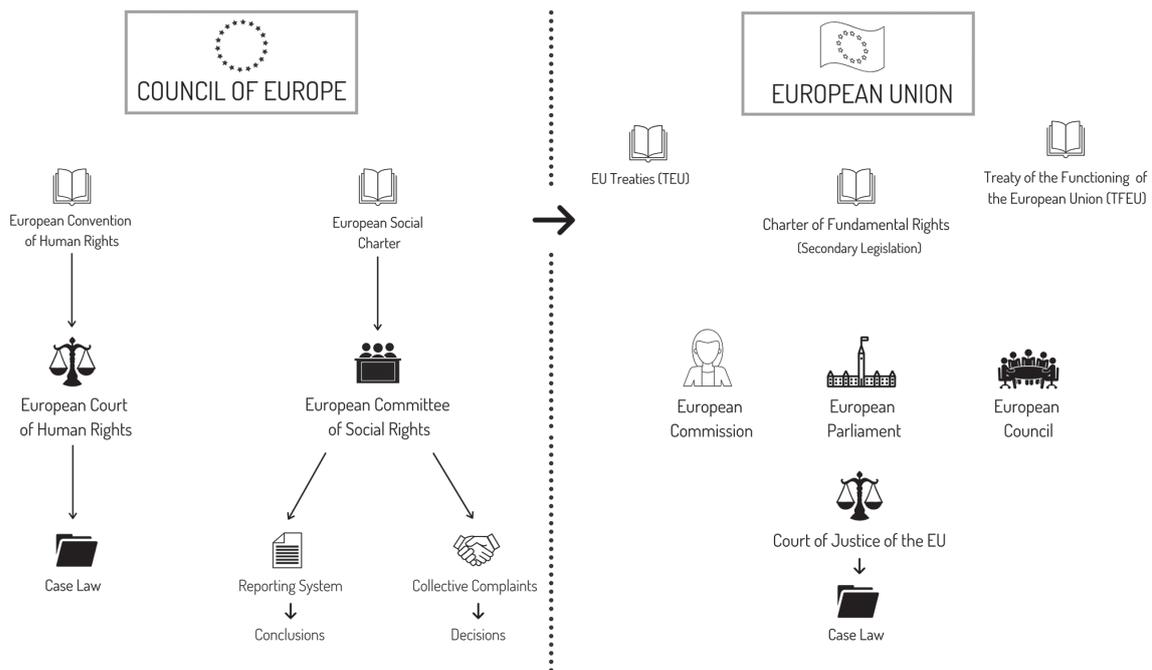
The EU Charter of Fundamental Rights (hereby the Charter) recognises a range of personal, civil, political, economic and social rights for EU citizens and residents, enshrining them in EU law. The Charter does not establish a general power for the European Commission to intervene in the area of fundamental rights. It can intervene only when EU law comes into play: when EU legislation is adopted or when a national measure applies EU law in a manner incompatible with the Charter. For instance, Article 47 of the Charter requires effective judicial protection of rights arising from EU law. The incorporation of the Charter into the Treaty of Lisbon gave legal effect to the “right to social and housing assistance” across Europe, although it is only applicable under social protection provisions.

Article 34.3

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 rules laid down by Community law and national laws and practices.

The Charter is accompanied by **Explanations** linking relevant UN Treaty Articles and the Revised European Social Charter to those of the EU Charter. For example, Article 34.3 draws on Article 13 of the European Social Charter and Articles 30 - *obligation to promote effective access to a range of services, including housing* - and 31 - *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* - of the Revised Social Charter.

The Charter must be applied to the interpretation of all obligations and actions taken under EU law, such as issues connected with migration, the single market, public procurement around housing, discrimination, etc.



STRATEGIC LITIGATION MECHANISMS

2

Strategic Litigation: Background and General Advice

The United Nations, the Council of Europe, and the European Union systems have several mechanisms in place to bring cases that can help advance the right to adequate housing. It is of critical importance that European and international human rights bodies engage more actively with the need for access to justice and protection of human rights of those who are homeless. Ensuring effective judicial remedies for the right to adequate housing is an immediate obligation of States, since “*there cannot be a right without a remedy to protect it*”.⁹

The procedures described below are all means to access justice on the right to housing, whether ensured by a judiciary or not. Both legally binding rulings and decisions benefit from high visibility and may be used to generate policy or legislative changes at national and local level. In most cases (but not always), an organisation that intends to initiate a procedure must exhaust domestic remedies before engaging in strategic litigation at European or international level. After that, the choice of procedure will depend on the treaties and protocols ratified or accessed by a State.

If your organisation does not have a legal or advocacy department, you may need to start by looking into the resources available to support your efforts. European organisations such as FEANTSA may assist you with this. Pro bono lawyers may be willing to collaborate with you. Legal clinics have existed for some time in English-speaking countries and more and more legal clinics are being set up across Europe. For an organisation with limited resources, finding the right interlocutors is crucial, so do not hesitate to contact us.

Before taking legal action, you should think about your aims and whether your main objective is predominantly legal, i.e. concerning the interpretation, application and content of a piece of legislation. For example, you may want to raise

awareness and put pressure on powerful actors to take measures to implement the law or to prevent evictions. Some goals are better achieved by doing advocacy work and attracting media attention to shed light on a problem. It is also important to assess the relevance and risks involved. If the case involves people whose rights have been infringed, they must be made aware that the process may be long, and that the decision may not be entirely helpful for a specific person but rather for a group in the future. It is important to be aware that sometimes the effort and resources devoted to the cause may not have the expected impact.

Information and consent of concerned persons is paramount, not only for their empowerment and for the respect of their rights but also to alert them to the fact that procedures require sustained contact. Individuals must be involved throughout the process and understand the consequences, both positive and negative, of its different stages.

United Nations

The ICESCR Optional Protocol Mechanism

The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) is an international treaty that has allowed victims of violations of economic, social or cultural rights to present complaints at international level, alone or as groups of individuals, since 2013.

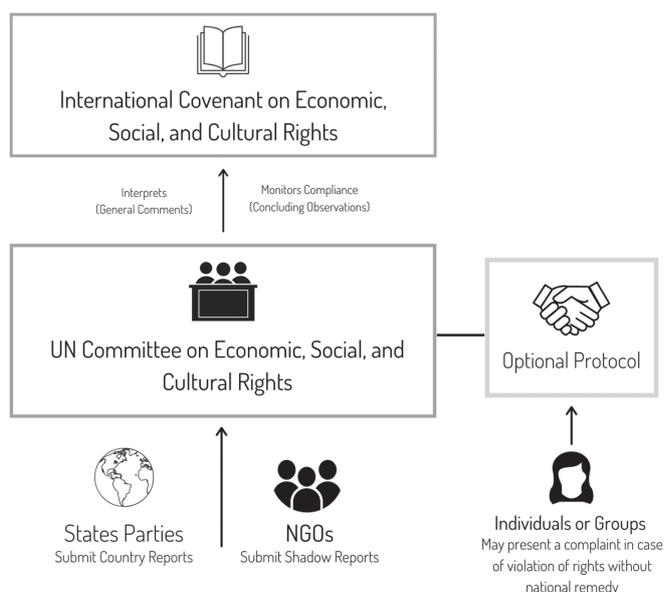
Article 2 OP-ICESCR

“Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.”

⁹ *I.D.G v. Spain* (Communication No. 2/2014), online: <http://www.housingrightswatch.org/jurisprudence/idg-v-spain-communication-no-22014-17062015>

Not all States Parties to the ICESCR have ratified the OP-ICESCR, so this must be verified for each state in question before considering this pathway. Furthermore, the Committee will not consider a communication unless it has ascertained that all available domestic remedies have been exhausted, unless the application of such remedies is unreasonably prolonged.

A key feature of the Optional Protocol is its provision requiring States to adopt **interim measures** in relation to communications brought before it, at any point prior to deciding on their merits (Article 5). States are obliged to adopt requested interim measures where necessary to prevent irreparable damage to the alleged victims involved in its communications, and to uphold the **petition procedure** provided for by the respective treaty.



☰ CASE SUMMARY

López Albán v. Spain¹⁰

JURISDICTION Committee on Economic, Cultural and Social Rights (CESCR)

LEGAL BASIS Article 11 ICESCR: Right to an adequate standard of living

SUBJECT

The CESCR found that Spain had violated the right to housing of the applicant and her children, since their eviction had been carried out without ensuring adequate alternative accommodation and without a prior proportionality assessment. Spain also violated their right to housing insofar as the author was excluded from social housing on the grounds that she had been occupying a housing unit without a legal title.

The Committee started by recalling the duty of the state to provide adequate alternative accommodation in cases of need and the safeguards afforded by the ICESCR against forced evictions, building on its General Comments No. 4 and No. 7 and its decision in the case of *Ben Djazia et al. v. Spain*¹¹. It emphasised the importance of ensuring the right of family members not to be separated from each other, and the distinction between emergency shelter and housing. Emergency shelter need not fulfil all requirements of adequate housing, but it must at least be safe, compatible with human dignity, and not become a permanent solution but rather a temporary step towards stable and adequate housing.

The Committee acknowledged that states can legitimately establish certain conditions that applicants must fulfil in order to obtain social benefits, including housing. However, these conditions must be carefully designed to avoid stigmatisation: a person's behaviour cannot in itself become a justification for the state's refusal to provide social housing.

¹⁰ *López Albán v. Spain*, No. 37/2018, online: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C12/66/D/37/2018&Lang=en

¹¹ *Ben Djazia et al. v. Spain*, No. 5/2015, online: <https://juris.ohchr.org/Search/Details/2407>

Council of Europe

Complaints before the ECtHR

This complaint mechanism allows victims of rights violations to take legal action against a State and seek justice when this has been denied domestically. A case should always be appealed in a State's highest court before an application is made to the ECtHR to avoid the risk of inadmissibility due to a failure to exhaust domestic remedies. Violations of the Convention must be pleaded in the first instance before national courts, with specific reference to applicable Convention Articles so that a potential application to the ECtHR can be prepared from the outset. Where a case involves violations of fundamental rights, lawyers should seek to have those violations established by the national court: if the court finds there is a violation, no subsequent application to the ECHR may be required.

The European Court of Human Rights may indicate **interim measures** to any State Party to the European Convention on Human Rights. Interim measures are urgent measures which apply where there is *an imminent risk of irreparable harm*. In most cases, the applicant requests the suspension of an expulsion or an extradition. The Court grants such requests for an interim measure only on an exceptional basis, when the applicant would otherwise face a real risk of serious and irreversible harm. For instance, in 2019, the French state was condemned by the ECtHR to accommodate a family under interim measures of article 39¹².

Protocol No. 16 to the Convention¹³ came into force on 1st August 2018 and allows the highest courts and tribunals of a State Party to request the Court to give *advisory opinions* on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention.

☰ CASE SUMMARY

Yordanova and Others v. Bulgaria¹⁴

JURISDICTION European Court of Human Rights (ECtHR)

LEGAL BASIS Article 8 ECHR: Right to respect for private and family life

SUBJECT

This case concerns the mass eviction of Roma people from their houses. It was brought before the Court by a group of Bulgarian nationals facing eviction from their homes which they had built on municipal land.

Domestic courts held that a removal order was lawful as the applicants had not established a legal ground for their occupation of the land. The case turned on the facts that the housing, although very basic, constituted the applicants' homes, that there was no suitable and certain alternative accommodation provided for the applicants should they be evicted and that being of Roma origin meant the applicants were a minority group, disadvantaged and vulnerable to discrimination.

The Court found that the "makeshift houses" of the applicants constituted homes for the purpose of Article 8 of the Convention and that the removal order missed the proportionality analysis completely. The enforcement of the removal order in question constituted an interference with the applicants' "private and family life" under Article 8.

Proportionality requires that cases "where a whole community and a long period are concerned" be treated differently (paragraph 121). The Court notes that the applicants had a long history of "undisturbed presence" (the government had de facto tolerated the settlement for decades) and, as a result, had built a decades-old community in Batalova Vodenitsa.

¹² *M. K. v. France*, 34349/18 (2018), online: <http://hudoc.echr.coe.int/eng?i=001-187849>

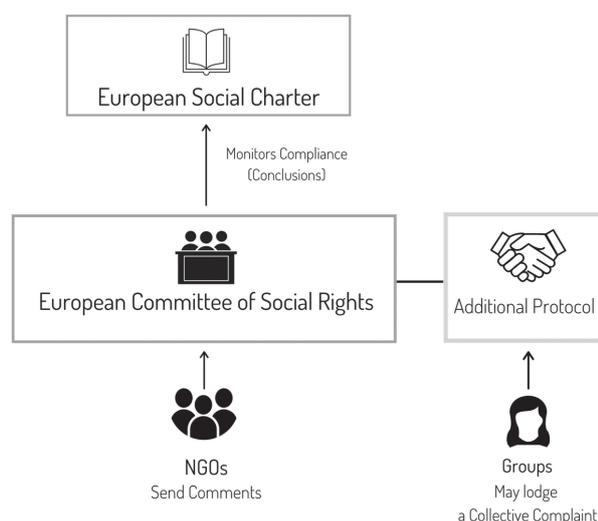
¹³ *Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, online: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/214>

¹⁴ *Yordanova and Others v. Bulgaria*, 25446/06 (2012), online: <http://hudoc.echr.coe.int/eng#{%22itemid%22:%22001-110449%22}}>

The Collective Complaint Mechanism

The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints aims to improve the effective enforcement of social rights guaranteed by the European Social Charter. It allows NGOs to lodge **Collective Complaints** against a State for non-compliance of the State's law or practice with one of the provisions of the Charter. Importantly, complaints may be lodged without exhaustion of domestic remedies and without the claimant organisation necessarily being a victim of the relevant violation.

The organisations entitled to lodge Collective Complaints are the European social partners: the European Trade Union Confederation (ETUC), for employees and Business Europe and International Organisation of Employers (OIE), for employers¹⁵, international non-governmental organisations (INGOs)¹⁶ holding participatory status with the Council of Europe, and social partners at national level. However, not enjoying participatory status is not an insurmountable obstacle to lodging a Collective Complaint. For Collective Complaints relating to the right to housing, non-consultative NGOs can become involved by working on a Collective Complaint which is then submitted through FEANTSA. This section provides an overview of the Collective Complaint process as well as FEANTSA's experience with lodging Collective Complaints. Our hope is to shed light on a mechanism that may seem more complicated to non-legal professionals than it really is.



STEPS TO PREPARING YOUR COLLECTIVE COMPLAINT

Has your Member State ratified the relevant Protocol?

To bring a Collective Complaint, your country must have ratified the *Additional Protocol to the European Social Charter Providing for a System of Collective Complaints*. Beneath the summary table in Chapter 4 you can check if your country has ratified the protocol.

What Rights has your country ratified?

Countries have an option as to which rights of the Social Charter they choose to ratify. In order to invoke a violation of a human right in a Collective Complaint, the state must have ratified the corresponding article. For example, in *FIDH v. Ireland*,¹⁷ Article 31 could not be used as the Irish State never ratified it. This does not prevent a Collective Complaint from being submitted but prevents arguments from relying on Article 31. In the Irish case the complaint focused on Article 16 on the rights of the family to housing.

Draft and Submit your Collective Complaint

In order to begin work on a complaint, you must have identified a violation of a right which you can make clear reference to in the European Social Charter. FEANTSA's experience suggests two key success factors in the preparation and drafting of a complaint:

- **National Champion:** an expert on the policy being discussed. In our sector this means they understand the homelessness and housing sector, they know the system, how it operates, and how it is failing the most vulnerable.
- **Legal Expertise:** a legal expert who can take the expertise of the national champion and connect it to relevant Articles of the European Social Charter. In the absence of such an expert, a wider team of experts may help review and improve the Complaint. The Housing Rights Watch Network can help you with this. Some legal support may also be needed to respond to comments from States at a later stage.

Content of the complaint

The Complaint should include information on the overall country situation as well as on the core issues of the Complaint, and present evidence to support the existence of violations. Then, the Complaint should assess the compatibility of current policy or law with the European Social Charter, to establish a violation of existing rights. To maximise the likelihood of success, the complaint must convincingly link evidence from the ground to existing laws and provisions of the Charter adopted by the country in question.

¹⁵ European Trade Union Confederation (ETUC): <http://www.etuc.org/>; Business Europe: <http://www.besnesseurope.eu/>; International Organisation of Employers (OIE): <http://www.ioe-emp.org/>

¹⁶ See other international non-governmental organisations (INGOs) here : <https://www.coe.int/web/european-social-charter/non-governmental-organisations-entitled-to-lodge-collective-complaints>

¹⁷ *International Federation for Human Rights (FIDH) v. Ireland*, Complaint No. 110/2014, online: <http://hudoc.esc.coe.int/eng?i=cc-110-2014-dmerits-en>

Ruling of Admissibility

After assessing whether a complaint meets the formal requirements, the European Committee of Social Rights (ECSR) hopefully declares it admissible. This is a technical step where the Committee rules whether the case can be examined. What is typically reviewed at this stage is whether the status of the complainant as well as all legal documents filed are appropriate.

Immediate Measures

Following the adoption of the decision on the admissibility of a Collective Complaint or at any subsequent time during the proceedings before or after the adoption of the decision on the merits, the Committee may indicate to the parties any “immediate measure” necessary to avoid the risk of serious damage and to ensure effective respect for the rights recognised in the Charter. In the case of a request for immediate measures made by a complainant organisation, the request must specify why it is being made, the possible consequences if it is not granted and the measures requested. A copy of the request is transmitted forthwith to the respondent State. The President of the ECSR sets a date for the respondent State to make written submissions on the request for immediate measures.

Member State Reaction and Possible Hearing

Once the Collective Complaint has been ruled admissible, the Member State will be given an opportunity to react and defend their policies. Usually the Committee will simply review the Collective Complaint and make a decision without a formal hearing. However, in more complex cases the Committee can hold an oral hearing where a complainant and the Member State is invited to argue their case. This was done in the case of FEANTSA v. France.

Decision of Merits

The Committee then takes a decision on the merits of the complaint, which it forwards to the parties concerned and the Committee of Ministers in a report made public within four months. This decision will address the various components of the case. The Decision of Merits will review the Articles being invoked in the case individually. For example, in the case of FIDH v Ireland, Article 16 was found to be violated.

Resolution

Finally, the Committee of Ministers adopts a resolution. If appropriate, it may recommend that the State concerned take specific measures to bring the situation in line with the Charter.

FEANTSA’s Experience with Collective Complaints

FEANTSA has lodged three Collective Complaints. In 2006, it submitted a successful complaint against France,¹⁸ which found that France was in breach of its specific obligations under Article 31 of the Revised Social Charter. In 2008, it submitted a complaint against Slovenia.¹⁹ The Slovenian Complaint targeted legislation that would have destabilized the housing security of 13,000 tenants. Essentially, the legislation would have downgraded the protections of tenants against the possibility of having their apartments expropriated by former occupiers. In 2012, it submitted a complaint against the Netherlands,²⁰ alleging that the country’s legislation, policy and practice regarding sheltering the homeless was not compatible with the European Social Charter.

In FEANTSA v France this procedure was used, for the first time, in order to bring a case against a Member State for failing to recognise and protect the right to housing. The Committee of Ministers’ resolutions in the case brought international attention and support to the French national housing crisis and provided a foundation for local efforts across Europe to stand up for the right to housing.

¹⁸ FEANTSA v. France, Complaint No. 36/2006, Council of Europe: European Committee of Social Rights, online: https://www.feantsa.org/download/feantsa_v_france_coe_collective_complaint1208980784196193438.pdf

¹⁹ FEANTSA v. Slovenia, Complaint No. 53/2007, Council of Europe: European Committee of Social Rights, online: https://www.feantsa.org/download/feantsa_v_slovenia_coe_collective_complaint6921956259592009522.pdf

²⁰ FEANTSA v. The Netherlands, Complaint No. 86/2012, Council of Europe: Committee of Social Rights, online: http://housingrightswatch.org/sites/default/files/2012-07-02_cc_feantsa_v_netherlands_final_0.pdf

☰ CASE SUMMARY

Collective Complaint FEANTSA v. France²¹

JURISDICTION European Committee of Social Rights (ECSR)

LEGAL BASIS Article 31 RESC: Right to housing

SUBJECT

This complaint alleged violations by France of the Revised Social Charter's section on the Right to Housing. The Complaint alleged that France had failed to implement the right to housing, and in particular to meet the housing needs of the most vulnerable. Having considered a wide range of French housing-related legislation, policies and plans as well as their implementation, in June 2008, the European Committee of Social Rights found six violations of Article 31.

This decision contains the most extensive definition of the nature and extent of the housing rights obligations of European States that have ratified Article 31 of the RESC and it is a valuable guide to evaluate housing systems from a human rights perspective. Notably, the Committee used the ICESCR as 'a key source of interpretation' of Article 31, as well as the UN Committee on Economic, Social and Cultural Rights' General Comments No.4 and 7 and the work of the UN Special Rapporteur on the Right to Adequate Housing.

In this respect, in FEANTSA v. France²², the ECSR pointed out that, although not based on an "*obligation of results*", housing and social rights measures taken must be practical and effective, rather than purely theoretical. States 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;
- c. Undertake regular reviews 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.

European Union

The Role of the Court of Justice of the EU

The Court of Justice of the EU (CJEU) recognises that international human rights treaties are another source of fundamental rights in EU law and ensures that their application is observed consistently across EU States. The CJEU can have several kinds of cases:

- **Requests for a preliminary ruling:** National courts can request that the CJEU interpret any EU provision.
- **Actions for failure to fulfil an obligation:** The Commission or an EU Member State can start these proceedings if they believe that a member state is failing to fulfil its obligations under EU law.

- **Actions for annulment:** Can be used by individuals who want the Court to cancel a law because it directly and adversely affects them.
- **Actions for failure to act:** Member States, other Community institutions (e.g. the European Parliament, etc.) and individuals or companies can lodge a complaint against EU institutions for failing to make decisions required of them.
- **Direct actions:** Any person or company who has suffered damage as a result of the action or inaction of the Community can bring an action seeking compensation.

²¹ FEANTSA v. France No. 39/2006

²² *ibid.* § 55-56

Courts and tribunals in EU countries, under Article 267 of the TFEU, may refer to the Court of Justice of the EU (CJEU) for a preliminary ruling. This procedure is used in cases where the interpretation or validity of an EU law is in question, and where a decision is necessary for a national court to give judgment; or where there is no judicial remedy under national law. The “preliminary ruling” procedure requests clarification on the nature and extent of the obligations set out in the Charter in relation to the right to social and housing assistance. Since decisions of the CJEU are binding on all national courts within the EU, this is viewed as a very efficient way of developing housing rights for homeless people. It is important to remember that national judges are sometimes insufficiently aware of European legal instruments, which means they remain an underutilised resource in national contexts. This is an important gap that you can help fill by insisting on the European and international dimension of social rights, and on the legitimacy of its implementation at national and local level.

In the case with *Aziz*²³, a Spanish mortgage law case about unfair contract terms which was brought before the CJEU, the court ruled that the Spanish procedural rules did not comply with EU law, as they made the application of the protection offered by the Unfair Terms in Consumer Contracts Directive “impossible or excessively difficult” (§63). National courts must consider “to what extent the contract places the consumer in a legal situation less favourable than that provided for by the national law in force” (§68). Unfair contract terms have led to other cases, such as *Sanchez Morcillo*, where Article 47 on fair procedures and remedies is mentioned.

In *Monika Kusionová v SMART Capital, a.s.*²⁴ the Court stated that “Under EU law, the right to accommodation is a fundamental right guaranteed under Article 7 of the Charter that the referring court must take into consideration when implementing Directive 93/13, the Unfair Terms in Consumer Contracts Directive”.

AMICUS CURIAE

At FEANTSA we believe that the right to housing should be introduced in legislation everywhere in Europe and that there should be an appropriate remedy to claim it as a subjective right. Imagine that we are aware of a case going to the ECtHR that will impact this at national level and we want to influence the Court’s decision. Despite not being directly involved, we would want to send a brief in support of this position. This type of brief is an *amicus curiae* (‘friend of the court’ in Latin). It is a legal document submitted by a person or group that is not directly involved but has similar interests in the case outcome. An *amicus curiae* brief outlines the arguments as to why the case should be ruled in a certain way.

NGOs with a broad interest in human rights protection have intervened in proceedings before the European Court of Human Rights, including the AIRE Centre, Amnesty, ECCR, FIDH, JUSTICE, Interights or the International Commission of Jurists. The Council of Europe Commissioner for Human Rights has the right to intervene in any proceedings before a Chamber or Grand Chamber according to Article 36 (3) of the Convention.

Moreover, some legal clinics include Third-Party Interventions before ECtHR among the activities that law students can do in collaboration with lawyers, NGOs, national or international institutions and under the supervision of a specialized academic team²⁵. Some examples of *Amicus Curiae* include:

- The *amicus curiae* sent by the UNHCR in *M.S.S. v. Belgium and Greece*²⁶ (on the Dublin II Regulation).
- The *amicus curiae* submitted by the UN Special Rapporteur on the Right to Adequate Housing, to the Constitutional Court of Hungary in 2019.²⁷ The Special Rapporteur requested the review of the constitutionality of the amendment which made residing in public spaces as habitual dwellings a petty offence, punishable by community service work or imprisonment.

²³ European Court of Justice, *Aziz v Caixa d’Estalvis de Catalunya Tarragona i Manresa (Catalunyacaixa)* (2013) Case C-415/11, [2013] 3 CMLR 5, online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62011CJ0415>

²⁴ Court of Justice of the European Union, case of *Kusionová v SMART Capital a.s.* No. C-34/13 (2014), online: <http://curia.europa.eu/juris/liste.jsf?num=C-34/13&language=EN>

²⁵ Human Rights Centre in Ghent, “Third-Party Interventions before ECtHR”, online: <https://hrc.ugent.be/clinic/third-party-interventions-before-ecthr/>

²⁶ *M.S.S. v. Belgium and Greece* (Application no. 30696/09), Council of Europe: European Court of Human Rights, online: <http://hudoc.echr.coe.int/eng?i=001-103050>

²⁷ Leilani Farha, *Amicus Curiae Submitted by Ms. Leilani Farha, UN Special Rapporteur on Adequate Housing and the right to non-discrimination in this context* (2018), online: https://www.ohchr.org/Documents/Issues/Housing/AmicusConstitutionalCourtHungary_1.pdf

ADVOCACY: PROCESSES AND TOOLS

3

Advocacy in the Context of Housing

Advocacy can be broadly defined as the efforts of organised citizens to influence the formulation and implementation of public policies using persuasion and pressure. These activities are aimed at gaining access to and influence over people who have decision-making power in matters of importance for a specific population group or for society in general. The Housing Rights Watch Network seeks to advance the rights of people who do not have a home and, at the same time, to make sure that people with low incomes have access to adequate and affordable housing.

Advocacy requires varied strategies implemented over time with great creativity and persistence. Victories may often be preceded by numerous failures, so organisations must learn from mistakes and continuously work to strengthen their organisation's technical capacity. Importantly, political advocacy requires human, material, and economic resources, so organisations must be prepared to dedicate trained staff and other key resources to the initiatives they undertake. This section focuses on domestic advocacy aimed at promoting the implementation of judgments and decisions issued at European level. The first part emphasises the importance of accompanying any strategic litigation process with advocacy to maximise likelihood of legal or political change. The second part highlights existing processes at European and international level that can be utilised to strengthen advocacy efforts at home. Advocacy work should also seek to build the capacity and amplify the voices of communities who are vulnerable and disempowered. This process is known as advocacy capacity building. It is a way of enabling people affected by an advocacy issue to voice their needs and problems, their hopes and solutions, so that they have the confidence and capability to influence decision-makers by themselves and instigate their own changes. Organisations working in this field or adjoining fields must empower themselves by developing the abilities and skills of staff, colleagues, and partners in order to learn how to speak with and on behalf of others.

Accompanying Strategic Litigation Through Advocacy in the ESC System

Domestic advocacy aimed at promoting the implementation of judgments and decisions issued at European level is a specific kind of advocacy: once there is a favourable judgment or decision, it has a better chance of being successfully implemented if complemented by political advocacy. Even before a favourable decision or court ruling is made, it is advisable to remind the government that it should take measures to change policies and laws that are in breach of human rights. Very often, the government will not act rapidly or might decide to stay silent about an issue and advocacy efforts must be deployed in order to persuade it to react.

Furthermore, engaging in strategic litigation presents several advocacy opportunities along the way, even before a final verdict is out:

- **Filing of the case** At the time of filing the case, this is an opportunity to receive some media attention and state the case in layman terms for a wider audience, in order to raise public interest and media interest and set the stage for follow-up as the case progresses.
- **Admissibility** If the case is deemed admissible, this is already a step in the right direction that deserves some media attention.
- **Interim/direct measures** These processes tend to be long, but the authoritative bodies mentioned in this report can issue intermediate measures before a final decision is reached. If this is the case, it should be highlighted at national or local level.
- **Decision of Merits and final resolution** is the moment where you should concentrate your biggest efforts and mobilise your media contacts to try to draw public attention to the issue and for the state to react and bring the situation into conformity with the Charter.

- **Specific moments of the reporting system** In cases where a ESC violation is found, the State must present in every subsequent report on the provision concerned in the complaint the measures taken to bring the situation into conformity. The Committee must determine whether the situation has been brought into compliance with the Charter in the framework of the Collective Complaints procedure or the Reporting system.

Advocacy, Enforceability and Coalition-Building

It is important to keep in mind that just because the verdict is out on a case, it does not mean the work ends there. On the contrary, in some cases this may be where the real work begins. Advocacy plays an especially important role in this context due to the varying degree of enforceability of the decisions issued by European or international bodies. In many cases, the state in question cannot be directly ordered to do anything. Nevertheless, it is a powerful indictment of the situation in a country for an authoritative body such as the CESCR or the ECSR to find rights violations, and it is therefore an opportunity for political pressure and advocacy. An illustrative example of post-verdict advocacy is *M.B.D. and Others v. Spain*. After the case, human rights organisations created a monitoring group to disseminate the information about the decision and undertake advocacy to ensure an adequate response from the Spanish government to the ESCR Committee's demands in terms of guaranteeing alternative accommodation before any eviction. Lawyers have used the contents of the decision to request the suspension of evictions in several cases, when suitable alternative solutions were not available. The Spanish government eventually passed new legislation that included the need for the local social services to guarantee alternative temporary accommodation before eviction takes place.

Advocacy and Case Diffusion

Considered on a case-by-case basis, strategic litigation can sometimes paint a pretty bleak picture: building a case is time- and resource- consuming; the process is often long and slow, and in the end, enforceability may be weak. But a shift towards a collective perspective can paint a different picture: together, NGOs involved in the fight for social rights form an ecosystem of organisations who can learn from each other, exchange past experiences, and diffuse legal outcomes for others to build from or complement their own cases with. The collective view on case outcomes is two-fold: firstly, if your government fails to enforce a decision, your case may not have been in vain if it helps organisations in other countries use elements of the case in their own domestic contexts (for more information on this, see Housing Rights Watch's Binding Obligations documents in the resource section). Secondly, if your case is successful and your state does

end up enforcing it, the question remains: is this decision being respected more broadly? What about other countries? If you diffuse a successful case to a larger network, other organisations can build on your past efforts into current or future cases.

Existing Processes to Amplify Your Advocacy Efforts

The UN CESCR Monitoring System

All States Parties are obliged to submit regular reports to the United Nations Committee on Economic, Social and Cultural Rights (CESCR) on how these rights are being implemented. The Committee examines each report and addresses its concerns and recommendations to the State Party in **Concluding Observations**. The issuance of these concluding observations is the single most important activity of human rights treaty bodies. It is an authoritative overview of the state of human rights in a country and includes forms of advice that can stimulate systemic improvements. The Concluding Observations may include recommendations on how to improve the situation as regards housing rights and homelessness in a specific country. The recommendations are not binding but can serve as a basis for future resolutions such as those of the UN General Assembly.

SHADOW REPORTS

Non-governmental organisations may submit **Shadow Reports** to the Committee as an alternative to a government's official report regarding the human rights – and therefore housing rights – situation in its respective country. Shadow reports are a unique tool through which NGOs can present civil society opinions on government action to United Nations Committees. The reports describe progress (or setbacks) in the fulfillment of social rights enshrined in the relevant international treaty, and can be seen as a civil society critique of the government reports that must be regularly submitted by states, highlighting issues that may have been neglected or misrepresented in the government reports. In cases where a government fails to submit a report or does not make its report available to NGOs in time for a critique, NGOs may submit alternative **reports** as a key source of information on the issues that are important to the cause.

The process provides national actors with an international forum where they can raise their concerns and is an opportunity for advocacy in an international legal environment. It enables civil society to show another side of the story to the committee than the one given by the State Party. The resulting Concluding Observations issued by the Committee can be very useful in subsequent advocacy work.

MAIN STEPS IN WRITING A SHADOW OR ALTERNATIVE REPORT:

1. **Identify priorities within the provisions of the treaty** in a joint process involving other interested groups. Try to find allies in relevant public institutions for up-to-date information and tactical tips. If there is sufficient time and resources, write a comprehensive shadow report covering all parts of the relevant treaty.
2. **Make it a joint effort.** A single shadow report supported by a large alliance is more powerful than scattered submissions.
3. **Gather and analyse information on priority issues.** Evaluate the measures the government has taken to address the parts of the treaty relevant to the issues. Collect laws or government policy documents that are in conflict with or fall short of the treaty.
4. **Write the report:** Make sure everything in the report is clear, accurate and based on verifiable evidence. The report will be more credible and accurate if it is the product of collective writing involving a range of organisations working on the issues. Follow the structure of the international treaty being reported on. Refer to earlier comments or recommendations issued by the monitoring body to the government.
5. **Disseminating the report:** Alternative and shadow reports are key sources of information for campaigners on economic, cultural and social rights. The report should be distributed to other NGOs and campaign supporters, used in dialogue with the government and other institutions, and posted on the campaign website.

RULES FOR SUBMISSION OF REPORTS

All submissions to CESCR should:

- Be submitted in English, French or Spanish. It is very useful if you could submit a report and/or summary translated into English. Please note that the UN Secretariat does not translate these reports.
- For the Session: Be transmitted to the CESCR Secretariat preferably 6 weeks and no later than 3 weeks before the beginning of the session.
- For the pre-session working groups: Be transmitted to the CESCR Secretariat preferably 10 weeks and no later than 8 weeks before the beginning of the pre-session.
- Be transmitted to the CESCR Secretariat electronically in MS Word format to the following *email address*: cescr@ohchr.org (please note that paper copies are in principle no longer distributed)
- Submissions should be as concise as possible, and should not exceed 10 pages, or max 15 pages for coalition submissions.
- Paragraphs in submissions should preferably be numbered for ease of reference.

Source: <https://www.endvawnow.org/en/articles/1302-alternative-and-shadow-reporting-as-a-campaign-element.html> (Last accessed in January 2020)

The UN Special Rapporteur on the Right to Adequate Housing

The **United Nations Special Rapporteurs** are appointed to investigate human rights issues in countries around the world. Leilani Farha, UN Special Rapporteur on the Right to Adequate Housing at the time of writing, has issued several thematic reports that can be helpful for advocacy. Themes include²⁸:

- Access to justice for the right to housing
- Human rights-based national housing strategies
- The right to adequate housing of persons with disabilities
- Financialization of housing and the right to adequate housing
- Homelessness as a global human rights crisis that demands an urgent global response

²⁸ You can find all of Leilani Farha's reports online: <http://www.unhousingrapp.org/resources>

The Special Rapporteur also examines progress on the right to adequate housing through country visits. At the Rapporteur's request, the Government will send an invitation for a fact-finding mission, during which experts assess the human rights situation in a country, as well as the specific institutional, legal, judicial, administrative and de facto situation under their respective mandates. They meet with national and local authorities; members of the national human rights institution; non-governmental organisations, civil society organisations and victims of human rights violations; the UN and other inter-governmental agencies; and the press. Your organisation can contact the Rapporteur ahead of their visit to organise a meeting with victims of violations.

Country visits' findings, conclusions and recommendations by special procedures are published in mission reports to the Human Rights Council. The value of engaging with the special procedures derives from their ability to identify and explore thematic and country-specific human rights concerns, open channels of communication between civil society and government, and frame local concerns in light of universally accepted human rights standards. Although intervention by special procedures rarely leads to immediate results, it can raise public awareness about an issue, raise the profile of domestic or local issues at the international level, and generate guidance on possible solutions within an international human rights framework. The visits tend to be very present in the media as was the case with the Special Rapporteur on Extreme Poverty Philip Alston's visit to the UK. In a recent paper, Alston critically discusses his own role as Rapporteur and the tangible impact it can have²⁹:

“Following my UK press conference, Ipsos MORI (market research company) found that concern about poverty and inequality reached its highest level in the 21 years since they had been polling on the issue. Twenty-one percent of the public identified poverty and inequality as a “big issue” in December 2018, up four percentage points from the previous month, making it the third biggest issue after EU/Brexit and NHS/Healthcare.”

The European Social Charter Reporting System

Within the framework of this reporting system, States Parties submit regular reports on the implementation of the European Social Charter in law and in practice. These reports are examined by the European Committee of Social Rights (ECSR), which decides whether the situations they describe comply with the Charter. The decisions adopted by the ECSR, called “Conclusions”, are published yearly and can be consulted on the European Social Charter HUDOC Database³⁰. Insofar as they refer to binding legal provisions the Conclusions of the ECSR must be respected by the States concerned; however, they are not enforceable in domestic legal systems. In practice, this means that when the Committee rules that the situation in a country fails to comply with the Charter, one cannot require the Committee's Conclusions to be enforced in domestic law. The Conclusions adopted within the reporting system are declaratory; in other words, they set out the law. On this basis, national authorities are required to take measures to give effect to the Conclusions under domestic law. Domestic courts may then declare invalid domestic legislation invalid if the Committee has ruled that it is not in compliance with the Charter.

COMMENTS BY NGOS

National NGOs can send **comments** on the national reports once they are published on the Council of Europe website. As with the UN Reporting Mechanism, these reports can support advocacy efforts. For more on the reporting system, take a look at the Council of Europe website³¹.

RULE 21A: COMMENTS ON NATIONAL REPORTS

1. Comments and other information relating to national reports submitted by trade unions, employers' organisations, NGOs and others in pursuance of Article 23§1 of the Charter as amended by the Turin Protocol shall be submitted to the Secretariat no later than 30 April of the year during which the Committee examines the national report concerned.
2. Comments registered and submitted to the Committee shall be forwarded to the Government concerned who shall be given six weeks to submit a response, if it so wishes.

Source: *Rules of the European Committee of Social Rights*
<https://rm.coe.int/rules-of-the-european-committee-of-social-rights-rev-2-bil/1680788a3d>

²⁹ Alston, Philip; Bassam Khawaja; and Rebecca Riddell (2019). *Much ado about poverty: the role of a UN Special Rapporteur*. Journal of Poverty and Social Justice 27(3): 423-429

³⁰ European Social Charter Data Base, <http://hudoc.esc.coe.int/eng#%7B%22ESCDcType%22:%5B%22CON%22%7D>

³¹ Reporting system of the European Social Charter: <https://www.coe.int/en/web/european-social-charter/reporting-system>

EU-Level Tools

European Commission Infringement Procedures

The European Commission can identify possible infringements of EU law through its own investigations or following complaints from citizens, businesses or other stakeholders. Article 258 of the Treaty on the Functioning of the European Union defines the conditions under which infringement procedures may be brought against an EU Member State for failure to comply with the requirements of EU law. If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State the opportunity to submit its observations. The European Commission can decide to start an **infringement procedure** against a Member State without there being an individual case. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.

Petitions to the European Parliament

A petition to the European Parliament may present an individual request, a complaint or an observation concerning the application of EU law or an appeal to the European Parliament to adopt a position on a specific matter. Such petitions give the European Parliament the opportunity to call attention to any infringement of a European citizen's rights by a Member State, local authority or other institution. Find out more about them online³².

Complaints Before the European Ombudsman

The European Ombudsman investigates **complaints** from individuals, businesses and organisations about maladministration by the institutions, bodies and agencies of the European Union. Maladministration occurs if an institution or body fails to act in accordance with the law or the principles of good administration or if it violates human rights. Maladministration can include administrative irregularities, unfairness, discrimination or the abuse of power, for example in the managing of EU funds, procurement or recruitment policies. It also includes the failure to reply to requests for, or the refusal or unnecessary delay in granting access to, information in the public interest. The European Ombudsman's work covers a broad spectrum of issues, one of them is Fundamental rights, ensuring that the EU's institutions and bodies guarantee fundamental rights in their work, and fulfil their commitments under the Charter of Fundamental Rights.

³² Petitions in the European Parliament: <http://www.europarl.europa.eu/atyourservice/en/20150201PVL00037/Petitions>

☰ CASE SUMMARY FEANTSA, Migrants' Rights Network and Praxis v. United Kingdom

AUTHORITY European Commission
LEGAL BASIS Article 35 of Directive 2004/38: Abuse of rights³³

SUBJECT

In June 2017, FEANTSA, along with the UK-based Migrants' Rights Network and Praxis, filed a complaint before the European Commission concerning the infringement by the United Kingdom of Article 35 under Directive 2004/38. The case concerned EU citizens in the UK against whom removal notices had been served after they were found sleeping rough. All of them had been living in the UK for years and all were workers or jobseekers or family members of EU citizens with a right to reside in the UK.

The complaint before the European Commission challenged the UK Government's use of European Economic Area regulations to remove rough sleepers and their family members on the basis that they are "misusing their right to reside". According to this approach, mobile EU citizens who are working or seeking work in the UK, or even who have been in the UK for less than 3 months, may be subject to administrative removal solely because they are sleeping rough.

FEANTSA believes that interpreting rough sleeping as a form of misuse of a right to reside contravenes EEA rules. Insofar as it concerns vulnerable EU citizens and their family members (including children) who do not have sufficient resources to afford adequate accommodation and are forced to sleep rough, this interpretation is bizarre and cruel.

FEANTSA, Migrants' Rights Network and Praxis encouraged the European Commission to undertake all necessary steps to clarify the UK's policies concerning some of the most vulnerable people in our society by starting investigations and launching a formal infringement procedure.

The Commission never had a chance to answer as part of this procedure because, on 14th December 2017, the High Court of the United Kingdom Queen's Bench Division in the *Gureckis and Others*³⁴ case ruled that the Home Office policy of considering rough sleeping as an abuse of EU free movement rights was unlawful. Following the national judgement, UK authorities published an amended version of the policy. In the revised policy³⁵, all references to rough sleeping as a misuse of Treaty rights were removed.

³³ Infringement procedure by FEANTSA, Migrants' Rights Network <http://www.migrantsrights.org.uk/> and Praxis: <http://www.praxis.org.uk/>. Read more about the complaint here: <https://befaireurope.wordpress.com/2017/06/15/why-the-european-commission-should-launch-an-infringement-procedure-against-the-uk-for-abuse-of-eu-free-movement-rights/>

³⁴ *Gureckis and Others*, CO/1440/2017, CO/2016/2017 & CO/2384/2017, United Kingdom: High Court of Justice (2017), online: <https://www.judiciary.gov.uk/wp-content/uploads/2017/12/r-gureckis-v-sshd-ors-20171214.pdf>

³⁵ Misuse of rights and verification of EEA rights: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/668091/Misuse-of-rights-and-verification-of-EEA-rights-v3.0EXT.pdf

ANNEXE I

SUMMARY TABLE OF EXISTING PROCEDURES

PROCEDURE	ICESCR OPTIONAL PROTOCOL	ESC COLLECTIVE COMPLAINT MECHANISM	ECTHR INDIVIDUAL COMPLAINT MECHANISM
Institution	United Nations (UN)	Council of Europe (CoE)	Council of Europe (CoE)
Oversight Body	UN Committee on Economic, Social and Cultural Rights	European Committee of Social Rights	European Court of Human Rights
Legal Provision for Housing	Article 11(1) ICESCR	Articles 31 & 16 ESC	Articles 2, 3, 8, 14 ECHR
Legal Nature of Body	Quasi-Judicial	Quasi-Judicial	Judicial
States Parties	10*	15**	CoE Member States
Consultative Status Required	No	Yes	No
Exhaustion of Domestic Resources?	Yes	No	Yes
Remedy	Individual	Collective	Individual
Average Duration of Proceedings	18 months	18 months	2-3 years

*Belgium, Bosnia and Herzegovina, Finland, France, Italy, Luxemburg, Montenegro, Portugal, Slovakia, Spain

**Belgium, Croatia, Cyprus, Finland, France, Czech Republic, Greece, Ireland, Italy, Netherlands, Norway, Portugal, Slovenia, Sweden, Turkey

ANNEXE II

ADDITIONAL RESOURCES

Strategic Litigation

European Network of Equality Bodies – Strategic Litigation Handbook
<http://equineteurope.org/2018/05/07/strategic-litigation-handbook/>

Open Society Justice Initiative – Strategic Litigation Impacts: Insights from Global Experience
<https://www.justiceinitiative.org/uploads/fd7809e2-bd2b-4f5b-964f-522c7c70e747/strategic-litigation-impacts-insights-20181023.pdf>

United Nations

General Procedures

Frequently Asked Questions about Treaty Body Complaints Procedures:
<https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx>

Working with the United Nations Human Rights Programme: A Handbook for Civil Society. New York and Geneva, 2008
https://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf

Engaging U.N. special procedures to advance human rights at home: a guide for U.S. advocates
https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/special_rapporteurs_report_final.pdf

NGO participation in the activities of the Committee on Economic, Social and Cultural Rights - Note by the secretariat (2000)
https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=63

European Anti-Poverty Network (EAPN) – Change, Hope, and Justice: A Rights-Based Approach to Poverty
<https://www.eapn.eu/wp-content/uploads/2018/06/EAPN-HRTF-ANNEX-Handbook-on-Poverty-and-Human-Rights.pdf>

Shadow Reports

The Advocates for Human Rights - 10 Steps to Writing a Shadow Report: https://www.theadvocatesforhumanrights.org/uploads/app_m.pdf

NGO Shadow Reporting – A Procedural Guide: <http://hrlibrary.umn.edu/iwraw/shadow/CESCRNGOguideJune2003.pdf>

UN Special Rapporteurs

Alston, Philip; Bassam Khawaja; and Rebecca Riddell (2019). *Much ado about poverty: the role of a UN Special Rapporteur*. *Journal of Poverty and Social Justice* 27(3): 423-429

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How can (I)NGOs engage with the European Committee of Social Rights under the monitoring procedures of the European Social Charter?

<https://rm.coe.int/prems-125919-ingos-engagement-ecsr-web-en/168098fcc1>

Requesting INGO Participatory Status with the Council of Europe

<https://www.coe.int/web/european-social-charter/non-governmental-organisations-entitled-to-lodge-collective-complaints>

European Union

Infringement Proceedings as a Tool for the Enforcement of Fundamental Rights in the European Union

<https://www.opensocietyfoundations.org/sites/default/files/infringement-proceedings-as-tool-for-enforcement-of-fundamental-rights-in-eu-20171214.pdf>

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CONTACT DETAILS

Maria Aldanas, FEANTSA
194, Chaussée de Louvain • 1210 Brussels - Belgium
Tel: +32 (0)2 538 66 69 • housingrightswatch.org