

# newsletter



HOUSING  
RIGHTS  
WATCH

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## Editorial

Welcome to the Housing Rights Watch Newsletter for winter 2011.

### 2011 - A year in review

We've had a busy year at Housing Rights Watch. Our conference in The Hague, The Netherlands, in June 2011 was attended by over 100 activists, researchers and NGO representatives. The topic: Migration and Housing Rights in Europe is one that will stay with us for a while. Service providers across the EU are dealing with increasing numbers of migrants seeking emergency shelter and help for other issues including evictions. The papers and presentations from the conference can be downloaded on the webpage: <http://feantsa.horus.be/code/EN/pg.asp?Page=1357>

Housing Rights Watch also pursued its litigation strategy by participating in the Pilnet (Global Network for Public Interest Law) European Pro Bono NGO Forum in Berlin last November. Several Housing Rights Watch correspondents attended the Forum and were able to meet with law firms who are interested in tackling housing rights issues at the European level. We are asking lawyers to work with us on the following questions:

- To assist NGOs affiliated to HRW and FEANTSA at the national level to use the law and housing rights to advance the rights of homeless people including migrants and others
- To compile a comparative report on the level of housing rights protection, relevant cases and reports and other useful legal information, in relation to the situation of homeless people and migrants, particularly those who are destitute in EU Member States.
- To examine the intersection of the EU Charter of Fundamental Rights (now binding EU law within the Treaty of Lisbon, TFEU) with national laws and policies on housing rights.
- To work on developing the frontiers of the EU Charter in the European Court of Justice – which has only seen two cases. In particular to look at the interaction between the Charter provisions on 'the right to social and housing assistance' with Member State actions, where they are implementing EU law, or indeed the actions of the European Institutions, could open up or mainstream a new approach to housing rights.
- To develop test cases to use the process of Article 267 TFEU Preliminary Reference procedure to enable individuals in national courts to seek a ruling from the European Court of Justice on the interpretation of the obligations on States contained in the Charter of Fundamental Rights. **HRW will publish a leaflet for activists and NGOs on this topic in early 2012 (it will be available in English, French, Spanish, Italian and Greek).**

Housing Rights Watch is keen to work with and support activists, service providers and researchers who want to engage in litigation at the local, national or European level. Please contact [Samara.Jones@feantsa.org](mailto:Samara.Jones@feantsa.org) if you are interested in being involved, and if you have experience and information that you would like to share.

Housing Rights Watch is preparing the ground work for a campaign against the criminalization of homelessness. This newsletter looks at the criminalization of homelessness and its impact in two countries: France and the USA. Marc Uhry writes about the increasing number

of legal measures that make it illegal to simply try to survive in France on a low or non-existent income. Heather Maria Johnson, from the National Law Centre on Homelessness and Poverty in the United States responds to Housing Rights Watch's questions about her organization's 2010 survey of the criminalization of homelessness:

 *iminalizing Crisis*. Their report details measures used by municipalities to make it illegal to sleep rough, to stay in public spaces, etc., and examines the impact of these measures on individuals who are homeless. The Law Center also published an accompanying Advocacy Manual which is a very useful tool for European service providers and activists interested in taking legal action. In our interview, HRW asked Ms. Johnson about the political and legal impact of the ~~National~~ Law Centre's campaigning and learned about some interesting results and unexpected allies.

Guillem Fernandez examines the dramatic number of foreclosures and resultant evictions as a result of the housing boom and economic crash in Spain. He clearly outlines the legal issues facing people who can no longer afford to pay their mortgages and the lack of support they receive from their government; he provides an example of at least one organization that is campaigning to protect people who are at the heart of this crisis.

We look forward to your comments and opinions on these articles. Please write to us at: [samara.jones@feantsa.org](mailto:samara.jones@feantsa.org) and join our discussion group on Google Groups by sending me an email requesting an invitation: ~~[samara.jones@feantsa.org](mailto:samara.jones@feantsa.org)~~

Samara Jones

## Homeless, go home!

### ~~Why the poor cannot be law-abiding in France~~

By MARC UHRY<sup>1</sup> - Fondation Abbé Pierre (France)

A raft of measures in France over the past decade have cut back access to social rights, condemning growing numbers of people to fend for themselves while criminalizing precisely what they have to do to survive.

First, the restriction of social rights. Society has forsaken (Old English *forsacan* – to reject, deny) entire groups of people. The repeated changes to how retirement pensions or unemployment benefits are calculated are penalizing people with the most chequered careers and driving the most vulnerable workers into poverty. Asylum seekers had the right to work and housing benefit until the late 1980s, and housing subsidies were ended in 91, I can't put the exact date to it (maybe it was 1988, the year when the government issued an order laying down the conditions of residence for access to social housing up to 2010 ...); these rights were taken away from them and marginal sub-categories were dreamed up which deprived asylum claimants of the protection of the Geneva Convention and its associated social rights. Of the 180,000 beds in psychiatric hospitals for people with mental health problems in the 1970s only 50,000 remain today, depriving two-thirds of the previous psychiatric

patients of health care. Young people under 25 do not qualify for minimum income benefit. Roma people have been denied the full rights associated with free movement within the EU, especially access to employment, for a transitional period that is forever being extended. And the list goes on ....

The authorities have handed out a few sops to make up for this, but they are far too few or inaccessible in practice: for example, young people can now qualify for minimum income benefit if they have worked for two of the previous three years – which is very difficult for the many young workers who can often only find temporary contracts – which would also qualify them for unemployment benefits, meaning they would not need minimum income benefit ... As a result, there is almost no take-up of this pseudo-right. The legions of applicants jostling for a place in the oversubscribed emergency shelter, health care and food assistance schemes are now made up of foreign nationals, the mentally ill, young people and women (who are particularly vulnerable to casual hire-and-fire employment, and therefore unemployment insurance reforms).

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Driven into poverty, they are left with no choice but to get by as best they can: squatting, knocking together crude huts, begging, some of the more resourceful scavenging in bins for resalable leftovers of the consumer society. These are methods of surviving and they are being criminalized.

One of the most striking examples comes from France's so-called Homeland Security Act 2003. While barely a quarter of local councils were fulfilling their statutory duty to provide caravan sites with amenities for travellers, this Act made spontaneous encampment into a criminal offence (from being a simple civil trespass). The police now always have power to stop this offence being committed: the police no longer need to get a court eviction order backed up by a fine and the possible seizure of vehicles. With nowhere else to park their vehicles, these families have become criminals by the mere fact of existing.

During the 1970s and 1980s, policies were implemented in France to knock down shantytowns, raze areas where living conditions were too substandard and rehouse people into decent homes. The policies and administrative options to re-house people still exist, but are not used by councils any more. Instead, if a squatter settlement appears now, the government evicts the occupants and knocks it down on the grounds that they have no right to settle on that land. Again, the occupants can stay in France, but have no right to physically settle anywhere; they are guilty of existing.

Local councils have passed a flurry of bylaws prohibiting begging and scavenging through dustbins. This is what we have come to today: that a person - a human being endowed with reason and feelings - is first of all, reduced to rummaging in dustbins just to survive, and is then punishable for it.

Many prostitutes are likely to be victims of human trafficking. They are victims but are also treated like criminals and subjected to constant police harassment, parking fines on their vans, etc., as police and authorities try to force them to the outskirts of towns to ply their trade in even more dangerous conditions.

These examples surely more than make the point that this is a general process of criminalizing the most vulnerable, or worse: criminalizing those made vulnerable by the organized restriction of social rights and welfare benefits.

Arguably, this is less the product of a deliberate agenda than a culture which has permeated government and is spreading undiscussed across Europe. We are fighting something unidentifiable and all-embracing. It is probably even within all of us, drained as we are by fear of

others, fear of the future, loss of a belief that together we can improve the human condition. It is no easy battle. But the criminalization of poverty can and must be fought by all means, because it is an attack on human rights, the basic dignity that everyone must enjoy above politics, i.e., regardless of their citizenship or other status. It is a principle born out of the French Revolution and is part and parcel of the democratic ideal.

It means fighting by using the law: the regulations and practices that criminalize poverty often violate international treaties that safeguard human rights. Civil society legal experts, lawyers, judges must fight what is effectively a guerrilla war against these abuses wherever they are found. It is important to recognize that criminalizing poverty by making survival practices unlawful is not a policy option, it is not a way to solve a social problem: it is a violation of the law by the institutions that use it and are meant to uphold it.

It means fighting by using democratic debate: we have to wake people up. Intellectuals, artists, voluntary groups that protect and help the most vulnerable, as well as the media, must campaign to stir public opinion. As witnesses of this problem, it is our duty to take a united stand against it.

It means fighting by demanding entitlement to social rights and access to social benefits: no-one wants to see these survival practices become entrenched. Those who need them must be entitled to social welfare safety nets. That obviously means demanding changes to the regulations instead of always plugging the gaps. But it also means that the various actors working in social services - local authorities, health, housing and employment stakeholders - should actively resist the temptation (and obligation...) to merely try to categorize and prioritize applicants to according the available financial means, rather than examining and addressing their legitimate needs. We must stop downgrading people's needs; we are not to blame for the failings of the system; we have neither to justify nor to perpetuate them. The general principle is that these rights are universal; it is the restrictions on that universality that must remain the exception.

This fight is not that of a group, a professional community or a political party. It is a jump-start that is vital to ensure not just the dignity of individuals but the dignity of our civilization and the survival of the democratic ideal, which is not based solely on the right to vote and a multiparty system, but also the safeguards that every individual must be able to enjoy against abuse of power by institutions.

In France and Europe, 2012 is the year to fight back!

## Criminalizing Crisis – Criminalizing homelessness in the USA – an interview with Heather Maria Johnson of the National Law Center on Homelessness & Poverty

More American cities are making it illegal to be homeless. *Criminalizing Crisis*, a comprehensive report by the National Law Center on Homelessness & Poverty (the Law Center) was published in November 2011 and analyzes local policies in 234 cities across the USA. The report charts a startling trend toward criminalizing basic acts necessary for a homeless person's survival, including eating and sleeping in public.

In December 2011, Housing Rights Watch interviewed Heather Maria Johnson, a Civil Rights Attorney with the National Law Center on Homelessness & Poverty (the Law Center) in Washington, D.C. to find out more about the report, *Criminalizing Crisis* and to ask how the Law Center tackled this important issue.

The criminalization of homelessness is also on the rise in Europe. Housing Rights Watch and FEANTSA will examine the scope of the issue in Europe in 2012 and campaign to fight these appalling and cruel regulations.

### Heather Maria Johnson, Civil Rights Program Director

Heather Maria Johnson coordinates the Civil Rights Project at the Law Center. She works with advocates to challenge city practices that criminalize homelessness. Heather serves as co-counsel in litigation, files amicus briefs, and serves as a resource for attorneys pursuing litigation. She also writes reports, articles, and other publications to provide legal guidance and information about the civil rights issues of homeless people.

In addition, Heather monitors civil rights issues throughout the country and provides technical assistance to advocates who are combating criminalization measures or working on voting issues. As part of the Civil Rights Program's public education initiative, she provides trainings related to strategies for challenging the criminalization of homelessness and promoting the voting rights of homeless persons.

Heather received her B.A. from the University of Virginia and her J.D. from Duke University School of Law, where she was a member of the *Duke Law Journal*. She also holds a M.A. in cultural anthropology. After clerking for the Hon. James P. Jones of the U.S. District Court for the Western District of Virginia, she was an associate at Latham & Watkins where she served as pro bono counsel in one of the Law Center's litigation matters challenging ordinances that criminalize homelessness.

The Law Center published its report:  Criminalizing Crisis – The Criminalization of Homelessness in US Cities in November 2011. Click here to read the report: [http://nlchp.org/view\\_report.cfm?id=366](http://nlchp.org/view_report.cfm?id=366)

### **Housing Rights Watch: How long has the Law Center been publishing these reports?**

*Heather Maria Johnson:* This was the Law Center's tenth report on the criminalization of homelessness. Our first report, "Go Directly to Jail," was published in 1991 and since then we have published reports on this topic every two to three years. We titled our recently released report, "Criminalizing Crisis." Since 2009, the homelessness and housing crisis in the United States has deepened significantly. Instead of adopting constructive policies

that address the root causes of homelessness, cities have increasingly chosen to enact laws that criminalize homelessness.

### **Housing Rights Watch: What do you mean when you talk about criminalization measures?**

*Heather Maria Johnson:* Homeless individuals that are living in public places out of necessity are often cited (given a ticket or fined by police) or arrested simply for engaging in necessary, life-sustaining activities, such as sleeping, lying or sitting on sidewalks, or begging, that are prohibited by municipal or state laws. Because homeless individuals often have no legal place to perform these activities, these laws essentially criminalize the status of being homeless.

To give you a sense of the magnitude of the problem, there are approximately 3.5 million people that are homeless each year in the United States and on any given night there are approximately 245,000 people who are forced to live on the streets or in public spaces. Criminalization policies directly impact a large number of Americans.

**Housing Rights Watch: What motivated the Law Center to research this topic? How has the economic crisis and recession impacted homeless people in the USA?**

*Heather Maria Johnson:* While the Law Center has opposed the criminalization of homelessness for a number of years, this topic is especially important given the economic crisis and the increase in criminalization measures that we have seen. Criminalization measures have increased by as much as ten percent since 2009.

This is an inappropriate response to deep economic recession. These measures are inhumane and economically irresponsible. Numerous cost studies have shown that criminalization carries significant costs to the criminal justice system and is more expensive than providing shelter or supportive housing.

**Housing Rights Watch: Why has there been an increase in the number of criminalization measures?**

*Heather Maria Johnson:* While I cannot speak to the motivations of the many local government officials who are involved in adopting these laws, my sense is that many cities are seeing an increase in the number of unsheltered homeless people, the most visible segment of the homeless population, and feel that something should be done. This is combined with the many misconceptions about homelessness. For example, many people think that homeless individuals do not work, but many homeless individuals are actively working or seeking employment. A 1999 study found that 44 percent of the homeless individuals surveyed had performed paid work in the previous month.

Another misconception that many city officials seem to hold is that the homeless people they see in their city are coming from other places. However, because of the economic crisis and the foreclosure crisis, there are many more homeless people in communities all over the country.

Some city officials seem to believe that by enacting stricter prohibitions and limiting resources available to persons experiencing homelessness; they will deter homeless individuals from coming to their cities or encourage them to leave. This ignores the fact that many homeless indi-

viduals have ties to these communities, such as family or employment. In addition, since virtually all American cities have measures criminalizing homelessness and cities are adopting harsher policies, there are fewer places where unsheltered homeless people can live without risk of violating these laws.

**Housing Rights Watch: How did you develop your methodology for this report? Did you talk to service providers? Service users?**

*Heather Maria Johnson:* We conducted both a review of municipal law to determine what criminalization measures are in place in cities across the country, as well as a survey of service providers, advocates and people experiencing homelessness to measure enforcement of laws criminalizing homelessness.

**Housing Rights Watch: How did you determine whether there had been an increase in ordinances criminalizing homelessness?**

*Heather Maria Johnson:* With assistance from a law firm working with us pro bono (for free), we reviewed municipal law in 234 cities. We had conducted a similar review of municipal law in 2009 and we were able to compare the results to identify the increases in certain types of criminalization measures. Of the 188 cities whose laws were reviewed in both 2009 and 2011, there was a ten percent increase in prohibitions on loitering, as well as a seven percent increase in prohibitions on begging or panhandling, and a seven percent increase in prohibitions on camping in particular public places.

**Housing Rights Watch: Can you tell us about the political impact of this report? The report itself very clearly explains the impact of criminalization policies on people experiencing homelessness, on service providers, etc. But what about the political impact of the report?**

*Heather Maria Johnson:* While it has only been a few weeks since the release of the report, we have heard from some government officials and we are hoping this will eventually lead to some concrete steps at the national level to limit criminalization. Past reports have led to some improvements in some cities. We have also heard from advocates who have seen the report. This keeps us informed as to what is happening around the country and enables us to provide technical assistance to these advocates who are opposing the passage of new criminalization measures or trying to limit enforcement of already existing measures.

**Housing Rights Watch: Have these arguments worked? Of course they make perfect sense: it is counter-intuitive to criminalize people who have no other option than to be outside. Has the Law Center had success in overturning any of these policies or working with unconventional allies?**

*Heather Maria Johnson:* Regarding unconventional allies, we have worked with police departments, which in many areas incur significant costs while enforcing these measures. Some police departments are interested in reaching solutions that limit enforcement of ordinances against homeless individuals who have no choice but to sleep outside, or ways to divert homeless individuals from the criminal justice system when their only violations are of minor criminalization measures. However, in other communities, police departments have been less receptive. The Advocacy Guide (contained in the report), includes several model police policies, which are designed to protect homeless persons' civil rights. As the result of advocacy, the Metropolitan Police Department in Washington, D.C., recently adopted a police order governing interaction between the police and homeless individuals, which included much of the language found in our model policy.

For more info on MPD order, see:

[http://nlchp.org/current\\_newsletter.cfm](http://nlchp.org/current_newsletter.cfm)

(Under subtitle **D.C. Metropolitan Police Issues New Guidance on Homeless Persons' Rights**)

**Housing Rights Watch: Has successful litigation against these laws resulted in the reversal of laws?**

*Heather Maria Johnson:* Yes that is how many of the constitutional principles cited in the report were established.

For example, St Petersburg, FL has many egregious criminalization practices, including a policy of banning homeless individuals from city parks under the city's trespass

ordinance. We challenged that policy in court. The trial court initially dismissed the lawsuit, but the appellate court recently reversed, holding that plaintiffs had stated viable claims that the city's use of the ordinance violated homeless individuals' rights to freedom of movement and procedural due process and allowing the litigation to move forward.

For more on the ST. Petersburg litigation:

<http://nlchp.org/news.cfm?id=165>

**Housing Rights Watch: How have you or the lawyers involved, found the cases? How easy is it to identify cases – especially when it comes to human rights violations or violations of constitutional rights?**

*Heather Maria Johnson:* We hear of violations in a variety of ways. Sometimes we get calls from local advocates, reporting different criminalization practices and the impact they are having on people in their community. Other times, we have already been monitoring the laws and their impact on homeless people.

Before we bring any litigation we conduct significant factual and legal research to determine whether there is unconstitutional enforcement of the local laws, whether there are strong legal arguments we can make, and whether the litigation would likely have a positive impact.

It is also critical to identify homeless individuals willing to be plaintiffs in the litigation. Because these laws can take a serious toll on homeless individuals – in terms of spending time in jail, being fined when they have no ability to pay fines, developing criminal records that can hinder their ability to find permanent employment and housing, as well as increased stress and anxiety from interactions with law enforcement – there are usually individuals willing to participate in litigation to vindicate their rights and the rights of other homeless persons.

## Foreclosures, Housing Rights and Prevention of Homelessness in Spain

By GUILLEM FERNÁNDEZ, *Associació ProHabitatge - HRW Spain / Autonomous University of Barcelona - IGOP*

Over the last 30 years there have been several speculative bubbles in the Spanish housing sector. The first boom took place in the early 1970s, when 500,000 houses per year were built until the oil crisis of 1973. This growth was not overly excessive, since the “secular shortage” of housing since the post-war period was being addressed, combined with the migratory waves from the rural areas to the cities resulting from industrialization processes and the demographic growth during that period. The second upward cycle in the housing sector occurred in the 1980s. This rise was based on the increase in housing prices and not on production, with less than 400,000 housing starts per year. In the cycle that lasted from 1998 to 2007, however, not only did housing prices skyrocket beyond the housing boom of the 1980s, but the rate of housing starts also exceeded the production levels of the 1970s. Consequently, the latest economic cycle was characterized by spectacular price hikes that surprised everyone not only because of their scale, but also because of the duration of the boom, which lasted almost ten years.<sup>2</sup> This was due to different reasons, including declining interest rates, laxer mortgage lending conditions, real-estate speculation and foreign investment in Spain. Housing starts topped 600,000 units per year in 2001, reaching 800,000 units by 2005. This was more than France, Germany and the UK combined. Nevertheless, in spite of these hair-raising figures, in 2001 the rental market accounted for only 11% compared to 82% who were homeowners. In 2001 a total of 3,106,422 houses were empty, 25.5% more than in 1991. Moreover, social housing in Spain accounts for 11% of the market versus the European average of 16%, but when we speak of social housing for rent, Spain has 3 social housing units for rent per 1,000 inhabitants, while the EU-27 average is 39 per 1,000.

In these residential conditions, the systemic crisis which we are still undergoing began in 2008, and its differentiated impact at the local level has translated, economically speaking, into a cooling off of domestic consumption, total credit restriction, and investment losses (mainly in construction, and particularly in housing construction.

This effect was inevitable, as the economic growth model was unsustainable over time. But more importantly, the social drama resulting from the collapse of the housing market is reaching unprecedented limits. During the years of economic growth, poverty remained at very high levels (around 19%), and is now on the rise, together with unemployment, which now affects nearly 5 million people.

One of the consequences of combining the promotion of a home ownership model and a crisis like the current one is that, according to the General Council of the Spanish Judiciary (*Consejo General del Poder Judicial*), close to 300,000 foreclosure proceedings were begun in Spain between 2007 and the first quarter of 2011. Foreclosures rose from 25,943 in 2007 to 93,636 in 2010, although the growth in these proceedings was very small in 2009 and 2010. Although it is true that there is a statistical problem that makes it impossible to distinguish foreclosures involving families evicted from their regular dwellings from cases of second residences or construction companies, it can indeed be said that we are confronted with an alarming “residential emergency” situation, as had been reported as early as 2006 by the UN Special Rapporteur for the right to adequate housing. These figures do not include data on evictions due to rent non-payment (which is not the subject of this article). Nevertheless, according to a survey of homeless people by the National Statistics Institute, 7.9% of the survey respondents found themselves out on the streets because they had been evicted, 11.4% were unable to continue paying rent, and another 7.9% reported that they were homeless because their rental agreement had expired. This accounts for more than one-fourth of the affected population.

### What role does the law play?

In a country where home ownership is promoted as a priority, a high percentage of the population is saddled with a mortgage that stretches out many years. During the boom, mortgages reaching 120% of the appraisal

2 Naredo, J.M. (2004): “Perspectivas de la Vivienda”. Revista de Economía ICE, no. 815 pp 143-154

value of new houses were financed, with instalments that meant payback could last up to 40 or even 50 years. As a result, bad banking practices proliferated: misleading advertising, incomprehensible contract clauses, granting of “incremental mortgages” that started out with affordable instalments depending on the family unit’s income but quickly doubled, compulsory inclusion in mortgages of virtually useless additional products, establishment of cross-collateral agreements through which family members and friends (and sometimes even total strangers) were made liable not only for their mortgages but also for the others’ mortgages in case of default, etc. In this regard, in a crisis context, many households were unable to meet mortgage payments due to a decline in income. When this happens, Spanish law provides for foreclosure proceedings which not only involve the loss of one’s regular dwelling, but also exposes people to having their salaries and other present or future assets attached. Specifically, under current regulations a bank can take over a dwelling at only 50% of the appraisal value and continue to demand that the family pay the balance plus interest and any court/legal costs. Article 579 of the Code of Civil Procedure specifies that once the mortgaged asset is auctioned, “if the product of the auction is insufficient to cover the credit” (the due balance of the mortgage loan plus interest and costs), the foreclosing bank can demand that the foreclosure proceeding continue. This implies attaching the affected parties’ assets (payroll, vehicles, checking accounts) up to the full amount of the debt. As a result of this procedure, many affected parties are forced to resort to the underground economy to avoid having their income seized.

Courts have started to react to what had, until recently, been an unquestioned mortgage foreclosure system. If the price of the property is trending upwards and there are people interested in purchasing it in an auction, the bank covers the debt with the price obtained from such an operation. But in the present context, this is not a very common occurrence, so the consequences for the debtor are very serious if the bank is awarded the property at 50% of its appraisal value, an amount that usually fails to cover the full debt. In other words, the bank may demand that the debtor pay the balance due and, at the same time, turn a tidy profit by re-selling the asset. If a house was appraised at 200,000 Euros and the debt amounted to 180,000 Euros, the bank can buy back the asset for

100,000 Euros and claim the 80,000-euro balance from the debtor. At the same time, it can put up the house for sale for 150,000 Euros, giving it an added profit of 50,000 Euros.

In light of this situation, there have been several significant court rulings. Firstly, an interlocutory (provisional) proceeding before the Provincial Court of Appeals (section two) of Navarra (no. 111/2010, 17 December) understands that the downward difference in actual value of the property obtained through an auction is the direct result of the unstable and speculative management of the economic and financial system, causing a severe decline in the real-estate market, both domestically and abroad. As a result, it takes into account only the value at which the property was originally appraised, and understands that the debtor is fully released from any liability because this value is higher than the debt due. This criterion has been followed by some courts of first instance. However, one month later, another interlocutory (provisional) proceeding before the Provincial Court of Appeals of Navarra (section three – no. 4/2011, 28 January) adopts the opposite solution, understanding (following the rationale of the Supreme Court in a ruling handed down during the economic boom) that the residual debt claim by the bank that had been awarded a property at a value lower than the appraisal value does not constitute misfeasance nor does it involve any form of unfair enrichment by the bank, as it is a right granted by the legal system which the courts are obliged to apply. Another possibility was opened with a challenge of unconstitutionality brought by the court of first instance number 2 of Sabadell (interlocutory proceeding of 30 September 2010), arguing that possible abusive clauses contained in the initial mortgage transaction and circumstances existing at the time it was granted cannot be examined in foreclosure proceedings. Specifically, an unconstitutional issue was brought before the Constitutional Court involving articles 695, 698 and 579 of the Code of Civil Procedure in relation to the fundamental right to effective protection of the court for people subjected to foreclosure proceedings (Article 24 of the Spanish Constitution), the right to housing (Article 47), and the principle of interdiction of abuse of discretion in the action of public authorities (Article 9.3). More rulings to the contrary are expected, so it will be necessary to wait for the Constitutional Court to make a declaration or for a legislative reform that will finally resolve the issue.<sup>3</sup>

3 Molera, J (2011): Morositat hipotecaria. Guia pràctica: alternatives i processos. Transformacions. Publicacions UB

## The administration's response, social movements and housing rights

The Spanish government is reacting very timidly to this scenario and its priority is to rescue the banks before people from the financial crisis. First the amount of land that could not be attached was increased. Changes were then made to the Code of Civil Procedure so that banks could adjudicate housing at 60% rather than 50%. Some autonomous regional governments are making more efforts than others, like Catalonia with its mortgage advisory service called *Ofideute*, which has handled more than 800 enquiries with a 44.3% success rate, where the *Generalitat's* service has triggered a housing mediation process reaching agreements between families with non-payment problems and the financial institutions.<sup>4</sup> But the social movements are one step ahead, through the *Plataforma d'Afectats per la Hipoteca* (PAH – Mortgage Victims' Platform), born in Barcelona in 2009 and now spread all over Spain.<sup>5</sup> On 3 November 2010, PAH launched a campaign called "*Stop desnonaments*" (Stop Evictions), and in one year it stopped more than 100 evictions throughout Spain. The campaign focused on evictions for rent delinquency as well as mortgage foreclosures. As a result of these actions, in some evictions the judge has opted to send riot police, generating serious conflicts<sup>6</sup> and in others to set open eviction dates, preventing protests from being called for a specific date and time. At this point we might recall the United Nations' recommendations on procedural guarantees that must be abided by in evictions: a real opportunity to consult with the affected persons; a sufficient and reasonable notice period for all the affected parties in advance of

the scheduled eviction date, providing all the information relating to scheduled evictions to all the interested parties within a reasonable period of time, the presence of government officials or representatives at the eviction, especially when it affects groups of people, exact identification of all the people involved in carrying out the eviction, not going forward with any eviction during bad weather or at night unless the affected parties give their consent, offering legal resources, offering legal aid whenever possible to people who need to seek redress through the courts. In the Recommendation by the Commissioner for Human Rights of the Council of Europe,<sup>7</sup> "prevention of homelessness" can include legal protection of tenants against unfair and disproportionate contract conditions, the indiscriminate termination of contracts and forceful evictions, and having a sufficient rental housing stock to provide housing to vulnerable groups. In addition, requirements on the availability of social housing for rent, selection criteria and waiting periods and lists are also prevention instruments. It would also be necessary to take into account the legal protection of people threatened with eviction, in particular the obligation to consult with the affected parties to find alternative solutions to eviction and the obligation to set a reasonable advance date or deadline for the eviction, as well as prohibiting evictions at night or in winter<sup>8</sup>. Consequently, we can say that there remains a lot of work to do in Spain in terms of homelessness prevention policy. Currently thousands of people are being evicted from their homes without the right to effective legal protection, all of this without affordable public social rental housing stock to which the administration can relocate affected families.

4 Ofideute: Informe de gestió (Management Report). 30 September 2011. Agència de l'Habitatge de Catalunya. Autonomous Government of Catalonia

5 <http://afectadosporlahipoteca.wordpress.com/>

6 You can see a video shot in the city of Barcelona at <http://www.youtube.com/watch?v=K5fm5baDHik&feature=related>

7 Recommendation of the Commissioner for Human Rights on the implementation of the right to housing Strasbourg, 30 June 2009. CommDH(2009)5

8 Mikkola, M. (2010): Social Human Rights of Europe. Legisactio

## Council of Europe – European Social Committee finds that most countries fail to ensure citizens enjoy a right to housing.

According to the Conclusions published by the European Social Committee in January 2012, the majority of countries that have signed up to Article 31 in the Revised Social Charter are not in conformity with the requirements. That is, they fail to ensure a right to housing.

### Revised European Social Charter - Article 31 – The right to housing

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.

### Reporting Process

Every year, all countries who have ratified the Revised Social Charter must submit a report to the European Committee of Social Rights. National governments report on specific articles which are divided into four thematic groups. So, all countries report on all of the provisions of the Revised Social Charter every four years.

The reports submitted at the beginning of 2011 included Article 31, the Right to Housing. The governments of the countries that have signed up to Article 31 justified their laws and policies on the right to housing and the reduction of homelessness. The Council of Europe's European Social Committee reviewed the reports and in January 2012 published detailed conclusions which clearly state whether a country upholds the rights or not.

Not all countries have signed up to Article 31. In fact, amongst the EU Member States, only **Finland, France, Italy, Lithuania, Netherlands, Portugal, Slovenia and Sweden** have accepted Article 31.

Of these countries, only **Finland** and **Sweden** were found to be in conformity with Article 31. The conclusions for each country make for interesting reading – and when

followed up at a national level, these reports can be very useful to advocate for improved access to housing rights and better homelessness strategies. It would also be interesting for organizations and researchers at national level to investigate how the national reports were compiled.

This article includes a review of some of the conclusions but is not meant to be exhaustive.

Social Committee Conclusions for your country:

[http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/ConclusionsIndex\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/ConclusionsIndex_en.asp)

National reports: [http://www.coe.int/t/dghl/monitoring/socialcharter/Reporting/StateReports/Reports\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Reporting/StateReports/Reports_en.asp)

FEANTSA members from **Italy** commented that their national report was submitted without consultation with the NGO sector, or even with the Ministry of Welfare. One has to wonder where the Italian government found their information about homelessness and the conditions in social housing.

The fact that **Finland** and **Sweden** are able to meet the requirements of Article 31 shows that it is possible to have an enforceable right to housing in Europe. In the conclusions for Finland under Article 31, section 2 – the reduction of homelessness – the European Social Committee recognizes Finland's focus on reducing and preventing long-term homelessness. The Committee further notes, using FEANTSA's Flash as a source, "that the quantitative target of this programme (i.e. to halve the homelessness figures by 2011 and to place 1,250 homeless people in either supported housing or service housing) was not only achieved but exceeded and that the "Housing first" principle has been recommended as an advanced example of how to tackle homelessness." ([http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Finland2011\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Finland2011_en.pdf)).

The European Social Committee levels serious criticisms at the countries that fail live up to their duty under Article 31. And often refers to the jurisprudence from the collective complaints brought against France and Slovenia by FEANTSA.

The Committee's conclusions for **France** cite information provided by FEANTSA in its successful collective complaint against France in 2007, as well as the jurisprudence from other complaints against France brought by ATD and the ERRC. France has failed to remedy the problems highlighted in the complaints and the Committee's decisions. ([www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/France2011\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/France2011_en.pdf))

## Summary of the conclusions for France

France fails to be in conformity with Article 31 because:

Article 31.1 – Access to housing of an adequate standard

- excessive length of residence requirement to be entitled to submit an application to the committee in charge of the DALO procedure;
- considerable unfit housing and lack of suitable amenities for a large number of dwellings;
- failure to create a sufficient number of stopping places and the poor living conditions and operational failures on such sites;
- lack of access to housing for settled Travellers;
- insufficient progress as regards the eradication of substandard housing conditions for a large number of Roma.

Article 31.2 – reduction of homelessness

- the measures to reduce the number of homeless persons are insufficient;
- the implementation of the legislation on the prevention of evictions and the lack of measures to provide rehousing solutions for evicted families is not satisfactory;
- Travellers' human dignity was not respected while carrying out eviction procedures.

Article 31.3 – price of housing should be accessible to those without adequate resources

- the shortage of social housing at an affordable price for the poorest people and low-income groups;

- the malfunctioning of the social housing allocation system and the related remedies
- the deficient implementation of legislation on stopping places for Travellers.

The **Netherlands** did not fare as badly as France, primarily because the European Social Committee deferred its conclusions. The Netherlands has been asked to submit more information, in regards to Article 31.1 and 31.3. Where the Committee did conclude, it found that: "the situation in the Netherlands is not in conformity with Article 31§2 of the Charter on the ground that there is no legal requirement to provide shelter to children unlawfully present in the Netherlands for as long as they are in its jurisdiction." This conclusion is in response to the collective complaint brought against The Netherlands by DCI (Defence for Children International).

[http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Netherlands2011\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Netherlands2011_en.pdf)

While it is unacceptable that so many of the states that have signed up to Article 31 have failed to meet its requirements, it is encouraging to note that the Council of Europe's European Social Committee's reporting process is thorough and accurate. Moreover, the impact of collective complaints – particularly those brought against France and Slovenia by FEANTSA – is obvious. States are being held to a higher standard because of this jurisprudence. These reports indicate that there is much work to be done to achieve real housing rights in Europe – particularly as so many EU Member States have not even signed up to Article 31. This mechanism, and the conscientious work of the European Social Committee, can be useful tools to advocate for access to rights, for better laws, and for effective strategies to reduce and eliminate homelessness in Europe.

## Case law update – European Court of Human Rights, Strasbourg

To read press release on the decision or the full-text articles, visit:

<http://cmiskp.echr.coe.int/tkp197/search.asp>

### Case of Bah v. The United Kingdom (Application no. 56328/07)

The case originated in an application (no. 56328/07) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Sierra Leonean national, Ms Husenatu Bah (“the applicant”), on 23 November 2007.

The applicant arrived in the United Kingdom in 2000 as an asylum seeker from Sierra Leone. Although her asylum claim was refused, she was granted exceptional leave to remain and then, in 2005, indefinite leave to remain. After she obtained indefinite leave to remain, she applied to have her son Mohamed Saliou Jalloh, a Sierra Leonean national born in 1994, join her in the United Kingdom. Her landlord was unwilling to accommodate her son as well, and informed the applicant shortly after her son’s arrival that they would have to move out by 31 March 2007. The applicant applied to the London Borough of Southwark Council for assistance on 9 February 2007, on the basis that she had become unintentionally homeless. An unintentionally homeless person with a minor child would ordinarily qualify as being in priority need pursuant to section 189 of the Housing Act 1996, and would thus be provided with suitable housing, usually within the locality. Those in priority need are considered to be a class of persons to whom reasonable preference must be given in the allocation of social housing. As there is a significant shortage of social housing in London, those in priority need would generally be placed in temporary accommodation until appropriate social housing became available. In the case of the applicant, however, as her son was subject to immigration control, he was disregarded by the Council in the determination of whether the applicant was in priority need, in accordance with section 185(4) of the Housing Act 1996. On 14 March 2007 the Council decided that the applicant was not therefore in priority need and not entitled to housing. *See relevant page(3)*

### Imprisonment of people with mental disorders or severe mental Case of De Donder and De Clippel v. Belgium (Application no. 8595/06)

The case concerned the suicide in prison of a young drug addict.

The applicants, Patricia De Donder and Ivan De Clippel, are Belgian nationals who were born in 1947 and 1945 respectively and live in Hoboken and Ghent (Belgium). They are the parents of Tom De Clippel, who was born in 1973 and committed suicide in Ghent Prison on 6 August 2001. Article 2 required the State to take appropriate steps to safeguard the lives of those within its jurisdiction. In certain circumstances the authorities had a positive obligation to take preventive operational measures to protect individuals from others or from themselves. According to article 5 the Court observed, firstly, that the deprivation of liberty at issue had had a legal basis in the Social Protection Act, which authorised the courts to order the detention of an accused where there were reasons to believe that he was suffering from a mental disorder or a severe mental disturbance making him incapable of controlling his actions. The Act clearly indicated that the detention was not to take place in an ordinary prison environment but in a specialised institution, or, as an exceptional measure, in a prison psychiatric wing. It is possible to compare this case with people with several mental health problems staying in homeless shelters which are not equipped to deal with their mental health problems, which happens all the time throughout Europe. *See relevant page (7)*

### Case of Kryvitska and Kryvitskyy v. Ukraine (Application no. 30856/03)

In this case, the applicants complained that their “right to a home” was violated on account of the annulment of their tenancy registration and eviction. They referred to Article 8 of the Convention, which reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of

disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Court considered that the applicants were deprived of adequate procedural safeguards in the decision-making process concerning their right to a home and there has, therefore, been a violation of Article 8 of the Convention in the instant case. *See the relevant page (5)*

## Events

### Housing Rights Watch Conference

HOUSING RIGHTS WATCH CONFERENCE

## International Conference – Contemporary Housing Issues in a Changing Europe

DATE: 20 & 21 April 2012

PLACE: Galway, Ireland

Registration is now open at:

<http://www.conference.ie/Conferences/index.asp?Conference=135>

#### The conference themes:

- homelessness and housing rights;
- the impact of the Treaty of Lisbon on housing, land and planning, homelessness, disability and other issues;
- recent developments in EU mortgage law;
- public interest law and housing;
- European land law developments;
- effects of the UN Convention on the Rights of Persons with Disabilities on housing/independent living/supported housing/consumer protection;
- legal issues relating to housing and older people; consumer law and housing;
- developments in rented housing law in Europe and;
- defining the relationship between law and policy in housing, land and planning in the meta-regulatory era.

This conference will be an excellent opportunity to share experience and ideas with professionals and researchers from across Europe. We encourage you to circulate this information to your own networks and hope that you will join us in Galway in the spring. Please visit the conference webpage (at the National University of Ireland, Galway): or contact Samara Jones, [samara.jones@feantsa.org](mailto:samara.jones@feantsa.org) for more information

CONFERENCE PARTNERS: Centre for Disability Law and Policy (CDLP) / Housing Rights Watch / FEANTSA / Fondation Abbé Pierre / European Network for Housing Research (ENHR), Legal Aspects of Land and Planning WG / Public Interest Law Alliance (PILA) / The Centre for Housing Law, Rights and Policy, at the National University of Ireland, Galway / Irish Council for Social Housing



## Council of Europe - European Committee of Social Rights decision finds that Portugal's Housing Policy for Roma Violates Social Charter

The European Committee of Social Rights delivered a [decision](#), finding Portugal in violation of the Revised European Social Charter. The decision is in response to the collective complaint brought by the European Roma Rights Centre (ERRC) concerning the housing situation of Roma in Portugal. [The entire press release](#)

### Past conferences – papers from these events are available online:

#### Ireland: 2011 Biennial National Social Housing Conference - Housing Ireland 2020

The 2011 Irish Council for Social Housing (ICSH) Biennial National Social Housing Conference took place on the 28th and 29th of September 2011 in Galway with approximately 290 delegates in attendance. The theme of "Housing Ireland 2020: Solutions for a New Environment" reflected a number of new realities since the last National Social Housing Conference in 2009. This new environment corresponds to the dramatic economic downturn which has meant less capital funding for social housing despite the increase in the need for social housing and related services in Ireland. The Irish social housing sector has had to readjust and develop new models of finance and delivery. The conference highlighted the need for all stakeholders to work towards housing solutions for the next decade. The Conference presentations can be downloaded from the Irish Council for Social Housing [website](#).

#### International Housing Summit

The second annual [International Housing Summit](#) (formerly called ISH.SUM) took place on the 1st and 2nd November in Rotterdam. The International Housing Summit is the only conference which brings together the affordable housing world to share experience and seek solutions to the shared financing, sustainability and community challenges facing housing providers today.

#### Housing Rights Watch Conference: Migration and Housing Rights in Europe – June 2011

The presentations from the 2011 Housing Rights Watch Conference are now available [on line](#). The aim of the conference was to explore legal entitlements and protection granted to migrants with respect to housing rights and the challenges migrants face in accessing them, share relevant case law and explore possibilities for strategic litigation in housing rights at all levels (national, EU, Council of Europe, United Nations).

## Resources

### New Book: *The Right to Housing in Jurisprudence* ~~“When the judges give body the right to housing”~~

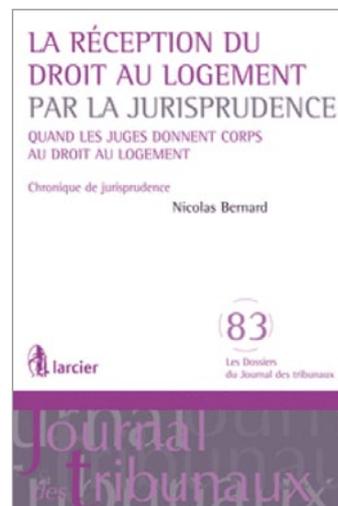
A [book](#) written by Nicolas Bernard, professor at Universites de Saint-Louis, in Belgium – and a member of Housing Rights Watch.

The Belgian Constitution’s fundamental charter includes [article 23](#) which recognizes the right to adequate housing, has been in force for over 20 years. Since being adopted, this provision has raised many questions, both in its content and its implementation:

- What does the adjective “decent” mean?
- What are the “relevant obligations” that should be charged to the beneficiary?
- Does [article 23](#) have a direct effect?
- Is it likely to have an impact on cases between individuals?

The Belgian courts ~~were given~~ the opportunity to deal with these questions and many others and some of the answers were straightforward, while others [λ](#)

Click here to [read the preamble](#) and [the afterword](#).



### New web site about homelessness and Housing First in Finland

[Housingfirst.fi](#) is a Finnish website (in English) for anyone interested in and working with the Housing First principle. The website includes information about Finnish homelessness in general and especially information about implementation of the Housing First principle in the Finnish context. Finnish and international publications related to the Housing First principle in the Finnish context and the Finnish actors fighting homelessness are gathered on the site. The Housing First principle, originating from the U.S., has reached Finnish housing policy, as the national programme to reduce long-term homelessness 2008-2011 has adopted the principle. The website works as a tool for the “Name on the Door” development project 2010-2012. For more information about the site and the “Name on the Door” project, contact [Marko Kettunen](#), Project Manager

### Local examples of measures criminalizing homelessness

The December HABITACT e-bulletin includes example of local measures in Hungary, the UK, Germany, France and Lithuania. Click here to read the HABITACT e-bulletin: [http://www.habitact.eu/files/news/news/issue9\\_final.pdf](http://www.habitact.eu/files/news/news/issue9_final.pdf)



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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](http://ec.europa.eu/employment_social/progress/index_en.html)

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The articles from this publication do not necessarily reflect the views of FEANTSA and Fondation Abbé Pierre. Articles can be quoted as long as the source is acknowledged.