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The Right to Housing

The right to housing:
A cornerstone of
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HOMELESS *in Europe*

Autumn 2003



The Right to Housing and Fighting Homelessness in Europe

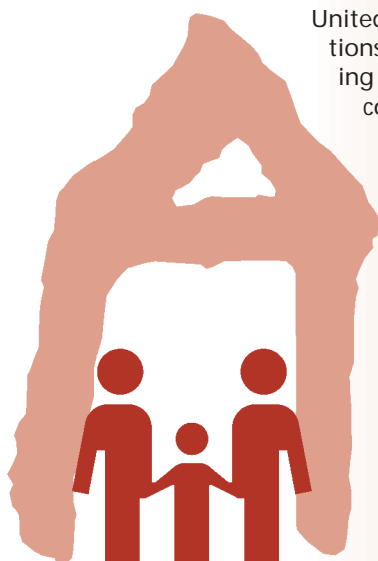
Economic, social and political rights are a cornerstone of both the Europe that we live in and the discussions on the 'future of Europe' that will soon be taken up by the Inter-Governmental Conference in Italy this winter. As Europe strives to build on its social heritage and to enshrine the European Charter of fundamental rights into a new European Constitution, **FEANTSA** has started asking some questions about where the right to housing fits in these discussions and decisions.

In this edition of **Homeless in Europe**, **FEANTSA** has gathered a number of articles that look at the application – or in many cases, the non-application – of the right to housing across Europe. For a factual approach, we've asked permission from the International Union of Tenants to reprint some very interesting data that charts the unequal rights to housing across the EU as well as citizens' means of recourse.

Dr Padraic Kenna calls on **FEANTSA** and other organisations to reinforce the human rights approach to combating homelessness across Europe. Dr Kenna also cites the hypocrisy of numerous European countries that have signed and ratified several international human rights instruments that include a right to housing, but in fact do not apply these rights in national legislation.

The Council of Europe has contributed an article that describes and explains the different European human rights instruments that include the right to housing, in particular the Revised Social Charter. In explaining its role as an adviser to governments in the application of rights and the drafting of legislation, the Council of Europe comments on the need for reinforced intergovernmental activity on the right to housing to convince countries of the necessity of proper and effective implementation and application of the right. Following on this legislative theme, Bret Thiele, writing on behalf of the Centre on Housing Rights and Evictions (COHRE), provides an analysis on forced evictions as a violation of the right to housing.

Because many of the human rights instruments that refer to a right to housing are international, we thought it might be interesting to make a comparison with a country outside of Europe. The United States is a country that prides itself on its individual rights, human rights among them, but has made little progress on the issue of the right to housing. Chester Hartman has written a number of important and provocative articles on the right to housing in the United States and **FEANTSA** had the pleasure of asking him a couple of questions in a telephone interview. While the realities of homelessness and housing exclusion are very different on either side of the Atlantic, Mr Hartman's comparisons can certainly help Europeans reflect on our own approach to combating homelessness and calling for housing rights.



In the second section of the newsletter, you will find five national case studies that look at different aspects of housing rights and housing policy. Starting with Scotland, Tom Roberts from the Scottish Council of Single Homeless (a **FEANTSA** member) looks at the recent steps toward ensuring the right to housing under new legislation. Michel Mercadié (Vice-President of **FEANTSA**) looks at the background to the Besson Act, which serves as an affirmation of the right to housing in France. Tying these two examples together is a short article by Jane Ball, a PhD candidate at Sheffield University, who looks at the differences between the French and British approaches to the right to housing. Donal MacManus from the Irish Council for Social Housing (**FEANTSA** member) discusses the impact of property rights on housing vulnerable groups in Ireland. This is a hot topic in Ireland at the moment, as the government has recently launched an All-Party Committee on the Constitution which will look what changes should be made to the Irish Constitution.



The two final case studies highlight the state of housing rights and legislation in two accession countries to the European Union. Eszter Somogyi, a researcher at the Metropolitan Research Institute in Budapest, charts the progress of housing policy from the fall of the Communist regime to the present day and outlines some of the key issues and challenges facing Hungary. Adrian-Nicolae Dan, a researcher at the Research Institute for Quality of Life in Romania, looks at the nature of housing in Romania and comments on the lack of implementation of the right to housing. His article provides a comprehensive analysis of the breakdown of a public housing system and the new legislative framework that fails to meet the growing needs of Romanian citizens.

The diversity of articles in this newsletter shows that the right to housing and rights linked to housing and property are important and urgent issues in Europe. Clearly a human rights approach to fighting homelessness can only complement and strengthen other efforts; this is a key issue for FEANTSA and something that will be a recurring theme in our work.

FEANTSA would welcome any comments on this newsletter and is always open to suggestions for themes or contributions for other editions. Please send your comments to: samara.jones@feantsa.org •

FEANTSA September 2003

The Application of the Right to Housing in the EU

The International Union of Tenants has kindly given FEANTSA permission to reprint part of its 2000 report on Access to Housing in the EU which includes its analysis of the application of the right to housing in EU Member States.

European citizens still have unequal rights to housing – Information from the International Union of Tenants

The table below shows considerable disparities between countries: taken from <http://www.iut.nu/> (September 2000)

	Right enshrined in constitution	Right established by legislation	A «right to housing» policy exists	Guaranteed right to housing
Austria	No	Yes	No	Not at all
Belgium	Yes	No (resources required)	Yes	Not guaranteed (resources required)
Denmark	No	No	Yes	Yes
Finland	Yes	Yes	Yes	Yes for homeless and low-income households
France	No	Yes	Yes	Affirmed but not guaranteed
Germany	No	Yes	Yes, at central government level	Guaranteed in the <i>Länder</i> but not put into practice
Greece	Yes	No (but it serves as a legal basis)	Yes	Not completely
Ireland	No	No	Yes	Not completely
Italy	No	No	No	Not at all
Luxembourg	No	Yes	Yes	Almost completely guaranteed
Netherlands	Yes	No	Yes	Not completely
Portugal	Yes	Yes	Yes	Guaranteed by central government
Spain	Yes	No	Yes	Yes
Sweden	Yes	Yes	Yes	Yes for some CSs
United Kingdom	No	No	Yes	Not completely

The Netherlands, Belgium, Sweden, Finland, Greece, Portugal and Spain (7 countries) have incorporated the right to housing in their constitutions.

Only Portugal, Denmark and Sweden guarantee the right to housing for the most disadvantaged groups.

Portugal has made the right to housing a duty, and undertaken to put it into effect. Sweden guarantees this right to the elderly, political refugees and people suffering from illnesses. In Denmark, town authorities are required to ensure a sufficient supply of housing for the neediest social groups (the elderly, disabled and homeless). This obligation can be met by having a place in a shelter or social reception centre.

In the next group of countries (France, Germany, Greece, the Netherlands, Belgium, Luxembourg, United Kingdom, Ireland, Denmark and Finland), the right to housing is not guaranteed, but a housing policy has been established to guide government initiatives in this area.

In 1989, France recognized the right to housing as a fundamental right, and in 1990 adopted further measures to promote access to housing for the most disadvantaged persons.

In Belgium and the Netherlands, the government is supposed to make every effort to meet the need for housing, but is not required to show results.

Spain has taken measures against eviction, but there is no obligation to house all those in need of housing within a specified period. Tax and economic incentives are provided, however.

Greece, Spain, the Netherlands and Belgium have no specific laws to implement the right to housing, although that right is recognized in the constitution.

Greece has no centralized procedure to assist the homeless or fight against evictions.

Ireland has made real progress on access to housing and quality of housing in recent years, due to a policy of housing subsidies for low-income households.

In the United Kingdom, ensuring that all families have decent housing is a stated goal of the government, although neither the law nor the constitution recognizes the right to housing.

The last group comprises Italy and Austria, where the right to housing is not recognized by the constitution, by legislation or by any co-ordinated policy in this area. <http://www.iut.nu/> (September 2000)

Housing Rights – a fresh approach.

By Dr Padraic Kenna. Board Member Irish Council for Social Housing. <http://www.icsh.ie/>

The right to housing as a basic human right has been expressed in international, European and national human rights instruments for more than fifty years. European States have adopted and ratified these human rights, yet their implementation still appears to present difficulties for homeless people. Recent policy developments at European and national level in relation to homelessness do not seem to advance rights for homeless people. Perhaps, it is now time for FEANTSA to champion a human rights approach in combating homelessness across Europe.

Within the Social Policy Agenda, the extensive development of non-statutory "policy" measures, as well as national managerialist service delivery and discretionary approaches in addressing the needs of homeless people, have all created a new terrain. While the discretionary policies, Strategies, Action Plans and other administrative measures have advocated participation and inclusion, there has been a clear absence of enforceable and effective rights for homeless people across Europe, with some notable exceptions, such as the new Scottish legislation. Of course, Belgium, Finland, Portugal, Spain, Sweden and the Netherlands have enshrined the right to housing in their national constitutions, and some countries have laws granting limited or full rights to housing to certain groups.

Many NGOs have been directed into collaborative approaches with the States, steered into ever widening circles of definitions, measurements, monitoring, preparing aspirational statements which have evolved from the widest possible (and expensive) consultation and participative approaches, and finally questioning their own roles. Are they now actually part of the State responses to homelessness, or are they advocates and supporters for homeless people? Human rights, which are so widely acclaimed by international and European leaders are being reduced to standards and benchmarks within customer service charters of public and homeless agencies.

While there are many misunderstandings and excuses in relation to rights to housing, "*many of these misperceptions and misinterpretations are similar to those that shadow work on economic, social and cultural rights in general.*"¹ Some recent studies on "social rights" would appear to absolve States from legislating or enforcing human rights, or acting as the ultimate responsible body for the welfare of all citizens. Instead, they seem to advance a purely symbolic approach to human rights alongside an array of discretionary services and managerialist approaches, with homeless agencies ultimately becoming low-cost providers. Of course, such key managerialist terms as customer and user feedback, consultation and participation in the planning of services etc. are commonly used, but rarely are homeless people or agencies involved in deciding the overall budget to be spent, or are in real control of services or resources. Users are "empowered" to complete questionnaires for feedback with simplified forms, but not empowered to assert their real civil and political rights in whatever forum is appropriate.

While the efforts of the European Commission in including homelessness into the non-enforceable NAPSind, with their participative approaches, one must question whether any structural change or increased resources will be addressed at actually helping homeless people.

Of course, it is very important to measure trends in the definition, extent and nature of homelessness as well as monitoring the nature and adequacy of services available. FEANTSA has developed a body of expertise in these areas, as well as in promoting best practice in service provision on a European-wide basis. There has been a cumulative development of

research on services and best practice models for provision of housing with care for homeless people.² These have developed the concept of supported housing as a specific form of housing provision which should be treated on a par with other house type provision. The particular issues relating women's homelessness have been carefully researched across Europe.³

Many of the new policies and Strategies in relation to homelessness ignore the large questions of power, allocation of resources in society, the role of law in upholding human rights, and indeed the historical and international dimension of the development of human rights. Without a contextual human rights dimension many homeless agencies are reduced to negotiating with officials over minor details and minor resource allocation decisions. Indeed, many are reduced to competing with each other for favour over resources, and seek to gain publicity for their cause to assist in this competition.

Some agencies are now turning to the human rights paradigm to support their arguments, and to place meaningful and effective obligations on governments in addressing homelessness. There is a renewed interest in human rights approaches among the progressive shapers of a new social Europe. There are important developments and opportunities to progress rights within the Charter of Fundamental Rights and the European Constitution. Of course, some new laws, such as the Race and Disability Framework Directives will impact on homelessness services. Indeed, there now exists the possibility to create European-wide rights for homeless people to adequate housing and appropriate services.

Framing issues of homelessness, access to adequate services, poverty and exclusion within a human rights paradigm offers a consistent, international and historical basis for examining current developments, and maintaining a coherent position in advancing the rights and position of homeless people. This approach transcends local and managerialist discretionary approaches, over-concentration on vague policy approaches, and treats homeless people with dignity and human personality rather than as units of service delivery systems.

All European States have accepted the Vienna Declaration:

All human rights are universal, indivisible and interdependent and interrelated. ... [I]t is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.⁴

All have adopted the Habitat Agenda:

Within the overall context of an enabling approach, Governments should take appropriate action in order to promote, protect and ensure the full and progressive realization of the right to adequate housing.⁵

International human rights law stresses that all States, notwithstanding their level of economic development, possess a **minimum core obligation** to ensure the satisfaction of, at the very least, minimum essential levels of each of the international rights adopted.⁶ According to the UN Committee on Economic, Social and Cultural Rights, a State in which any significant number of individuals is deprived of basic shelter and housing is *prima facie* failing to perform its obligations under the Covenant. A minimum core requirement with respect to the right to adequate housing entails a State's duty to immediately address the housing needs of its respective population if any significant number of individuals are deprived of basic shelter and housing. To do otherwise is considered a *prima facie* violation of the right to adequate housing.



Beyond this core requirement, the right to adequate housing, imposes three levels or types of obligations on States parties: the obligations to **respect**, to **protect** and to **fulfil** these rights.⁷ Further, States are required to take steps with a view to the “**progressive realization**” of these rights, by all appropriate means, and particularly the adoption of legislative measures. The duty of fulfillment comprises active measures by government necessary for guaranteeing that each person under its jurisdiction has access to the entitlements of housing rights, which cannot be obtained through exclusively personal efforts.

The UN monitoring system has provided guidance for States on their obligations in a series of General Comments.⁸

In the Committee's view the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity...based ...on the “inherent dignity of the human person.”⁹

While valuable work continues on models of service delivery, policy and analyses of homelessness it is the duty of FEANTSA to lead the development of housing as a human right in Europe and beyond. Of course, advancing rights to housing will involve working with those who are promoting rights to health, income, adequate protection, freedom from discrimination and racism, freedom of expression and other human rights. But valuable platforms exist to raise the fundamental human right to adequate housing, such as the Collective Complaints system of the Council of Europe, the UN Committee on Economic, Social and Cultural Rights, use of the existing EU laws in relation to equality and non-discrimination in resource allocation, challenging the “*inhuman and degrading*”¹⁰ treatment of homeless people and supporting individual human rights claims.

At a European level we need to promote appropriate action to make the international accepted human right to housing for all homeless people a reality. There are many opportunities to establish these human rights as effective housing rights in the law of Europe, as well as at national level. Indeed, it is not possible to have full citizenship rights, social solidarity or social inclusion without the socio-economic right to housing. ●

⁷ U.N. Doc. E/CN.4/Sub.2/1994/20. *The realization of economic, social and cultural rights. The right to adequate housing.* Second progress report submitted by Mr. Rajindar Sachar, Special Rapporteur. Paras. 17-45.

⁸ See Edgar et al. (2000) *Support and Housing in Europe*, Bristol: The Policy Press

⁹ See Edgar, B. & Doherty, J. (2001) *Women and Homelessness in Europe*, Bristol: The Policy Press.

⁴ *Vienna Declaration and Programme of Action* 1993. World Conference on Human Rights.

⁵ *Habitat Agenda*, para. 61.

⁶ For a full description of all international and regional human rights instruments relating to rights to housing see LEGAL RESOURCES FOR HOUSING RIGHTS: International and National Standards, 2000, Centre on Housing Rights and Evictions, Geneva, Switzerland. <http://www.cohre.org>

⁷ See General Comment 3 *Nature of States parties obligations*, UN Doc. E/C.12/1990/84

⁸ UN Doc.E/1991/23. UNCESCR. *General Comment No. 4. The Human Right to Adequate Housing*. Geneva: United Nations. 1991.

⁹ *Ibid.* para.7.

¹⁰ Article 3, *European Convention of Human Rights and Fundamental Freedoms*.

SOME USEFUL DOCUMENTS RELATING TO HOUSING RIGHTS.

- **UNIVERSAL DECLARATION ON HUMAN RIGHTS (1948)**, adopted and proclaimed by United Nations General Assembly resolution 217A (III) on 10 December 1948. Article 25(1) states: *Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, **housing** and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.* <http://www.un.org/Overview/rights.html>

- **INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966)**, adopted by United Nations General Assembly (UNGA) resolution 2200A(XXI), 16 December 1966, entered into force on 3 January 1976. State compliance with the Covenant is monitored by the UN Committee on Economic, Social and Cultural Rights. Article 11(1) states: *The States Parties to the present Covenant recognise 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.* http://www.unhchr.ch/html/menu3/b/a_cescr.htm

- **INTERNATIONAL CONVENTION ON THE RIGHTS OF THE CHILD (1989)**, adopted by UNGA resolution 44/25 on 20 November 1989, entered into force on 2 September 1990. Compliance with this Convention is monitored by the UN Committee on the Rights of the Child. Article 27(3) states: *States Parties in accordance with national conditions and within their means shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and **housing**.* <http://www.unhchr.ch/html/menu3/b/k2crc.htm>



- **GENERAL COMMENT NO. 4 (1991) THE RIGHT TO ADEQUATE HOUSING** (ART. 11(1) OF THE COVENANT), adopted by the UN Committee on Economic, Social and Cultural Rights on 12 December 1991. U.N. Doc. E/CN.4/1991/4 (1991).

<http://www.unhchr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e?OpenDocument>

- **COUNCIL OF EUROPE - CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS. (ECHR) Rome, 4.XI.1950**

Article 3 – Prohibition of torture.

*No one shall be subjected to torture or to **inhuman or degrading treatment** or punishment.*

<http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>

- **COUNCIL OF EUROPE - THE EUROPEAN SOCIAL CHARTER (1961)**, adopted in Turin on 18 October 1961, revised and amended in 1996.

Article 16. *With a view to ensuring the necessary conditions for the full development of the family..., the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as ...provision of family **housing**.*

Article 19(4). *With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting States undertake...(4) to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect to the following matters...(c) **accommodation**.*

Article 23 - The right of elderly persons to social protection

*With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage...provision of housing suited to their needs and their state of health or of adequate support for adapting their **housing**;*

Article 30 - The right to protection against poverty and social exclusion

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

*a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, **housing**, training, education, culture and social and medical assistance;*

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.*

<http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm>

European Union (EU) COMMUNITY CHARTER OF FUNDAMENTAL SOCIAL RIGHTS (1989), adopted on 8 December 1989 in Strasbourg. Article 29 states:

*All disabled persons, whatever be the origin and nature of their disablement must be entitled to additional concrete measures aiming at improving their social and professional integration. These measures must concern, in particular, according to the capacities of the beneficiaries, vocational training, ergonomics, accessibility, mobility, means of transport and **housing**.*

- **COUNCIL OF THE EUROPEAN UNION Charter of Fundamental Rights of the European Union. Explanations relating to the complete text of the Charter. December 2000.**

http://www.europarl.eu.int/charter/default_en.htm

<http://register.consilium.eu.int/pdf/en/03/cv00/cv00828-re01en03.pdf>

Report of Working Group: <http://register.consilium.eu.int/pdf/en/02/cv00/00354en2.pdf>

Article 34 - Social security and social assistance.

*...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 procedures laid down by Community law and national laws and practices.*

EU Council Directive 2000/43/EC. OJ. L. 180/22. 19.7.2000. promotes the implementation of the principle of equal treatment between persons irrespective of racial or ethnic origin and specifically:

Article 3(1) *...Shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to: ... (h) access to and supply of goods and services which are available to the public, including housing.*

http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/l_180/l_18020000719en00220026.pdf



The right to housing: A cornerstone of the Council of Europe's social cohesion strategy

By Gabriella BATTAINI-DRAGONI, *Director General* and
Stefano DOMINIONI, *Administrator*

COUNCIL OF EUROPE - Directorate General of Social Cohesion - 10.09.2003

The Council of Europe provides member states with the highest quality of legislative advice in the field of access to housing, with a particular focus on setting standards for fostering social cohesion and the concrete access to social rights for the most vulnerable populations. The right to housing is one of the pillars of the Council of Europe's **Social Cohesion Strategy**.

1. SETTING INTERNATIONAL STANDARDS AND MONITORING: THE EUROPEAN SOCIAL CHARTER AND THE RIGHT TO HOUSING.

For an international organization like the **Council of Europe**, strongly committed to the protection of human rights, the right to housing is of fundamental importance. The significance of housing and the corresponding responsibilities of national governments have been recognised in a number of our legal instruments. The Council of Europe's **European Social Charter of 1961** (Art. 16), its additional Protocol of 1988 (Art. 4), and the **Revised European Social Charter of 1996** (Art. 31) clearly states that with a view to "ensuring the effective exercise of the right to housing, member states undertake to take measures designed: 1. To promote access to housing to 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". Housing for particular categories of people is also covered by other provisions: Article 16 for families and Article 23 for elderly persons.

The **Charter's supervisory machinery** plays a decisive role in the implementation of the rights. It occurs through two different types of procedures. The first is the examination of **national reports**, it which allows a regular and systematic legal appraisal of the observance of States' undertakings. Every year the states parties submit a report indicating how they implement the Charter in law and in practice. Each report focuses on the content of some of the accepted provisions of the Charter: in odd years the report concerns the « hard core » provisions (Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20; States must have accepted at least 6 of these 9 Articles); in even years the other half of the provisions¹. The **European Committee of Social Rights**² examines the reports and decides whether or not the situations in the countries concerned are in conformity with the Charter. Its decisions, known as "conclusions", are published every year. The second mechanism is the collective complaints procedure as set by an additional Protocol to the Charter³. Complaints are directed against one of the States Parties that have ratified the Protocol and concerns one or more provisions of the Charter in respect of which the state in question has allegedly failed to comply with the Charter. This mechanism allows the European Committee of Social Rights to react immediately to a precise situation of violation of fundamental rights. In 2002-2003, Conclusions have been published for Bulgaria, France, Italy, Romania, Slovenia, Sweden⁴.

The specific **right to housing** has been examined for Italy, France, Slovenia and Sweden in Conclusions 2003⁵ and its findings are available on the European Social Charters' Website. On that occasion, the European Committee of Social Rights has **interpreted Article 31** defining fundamental notions, such as adequate housing, homeless persons, forced eviction and housing affordability. It has also set what action States are required to carry out to ensure the effectiveness of the right to housing: these include among others the control of adequacy, construction policy, social housing, housing benefits, judicial remedies, and urgency housing for homeless.

¹ (http://www.coe.int/T/E/Human_Rights/Esc/2_General_Presentation/SocialCharterGlance_aug02%20.asp#TopOfPage)

² "The European Committee of Social Rights ascertains whether countries have honored the undertakings set out in the Charter. Its 13 independent, impartial members are elected by the Council of Europe Committee of Ministers for a period of six years, renewable once. The Committee determines whether or not national law and practice in the States Parties are in conformity with the Charter (Article 24 of the Charter, as amended by the 1991 Turin Protocol)" (quoted from the European Social Charter's official website).

³ "Organisations entitled to lodge complaints with the Committee: - In the case of all states that have accepted the procedure: 1. the ETUC, UNICE and the IOE; 2. Non-governmental organisations (NGOs) with consultative status with the Council of Europe which are on a list drawn up for this purpose by the Governmental Committee; 3. Employers' organisations and trade unions in the country concerned; - In the case of states which have also agreed to this: 4. National NGOs" (quoted from the European Social Charter's official website).

⁴ http://www.coe.int/T/E/Human%5FRights/Esc/4%5FReporting%5Fprocedure/2_Recent_Conclusions/2_By_year/Revised_Social_Charter/Conclusions%20Revised%20Charter%202002.pdf

⁵ http://www.coe.int/T/E/Human%5FRights/Esc/4%5FReporting%5Fprocedure/2_Recent_Conclusions/2_By_year/Revised_Social_Charter/Conclusions%20Revised%20Charter%202002.pdf

The Council of Europe is working with its member states providing legislative advice in order to implement and effectively enforce laws and regulations to prevent any discrimination in access to housing.

By now, almost all of the 45 member countries of the Council of Europe have either **signed⁶ or ratified⁷** the Revised European Social Charter. That means that both the relatively prosperous countries and the countries in difficult economic situations adhere to these common standards. Despite these important ratifications, it is important to underline that not all the countries who have ratified the Social Charter have also accepted the provisions contained in Article 31 on the right to housing⁸. The Council of Europe is working with those member states that have yet to accept Article 31 stressing the importance for social cohesion of full compliance with its provisions.

The effects of the application of the Charter in the various states is important. "If a state takes no action on a Committee decision to the effect that it does not comply with the Charter, the Committee of Ministers addresses a recommendation to that state, asking it to change the situation in law or in practice. The Committee of Ministers' work is prepared by a Governmental Committee comprising representatives of the governments of the States Parties to the Charter, assisted by observers representing European employers' organisations and trade unions"⁹. Although individual complaints are not admitted, collective complaints are possible on the basis of an additional Protocol to the Charter¹⁰. As a result of the monitoring system, states make many changes to their legislation or practice in order to bring the situation into line with the Charter. Details of these results (and current developments) are described in the "Survey", published annually by the Charter Secretariat¹¹.

2. PROVIDING POLICY ADVICE: THE COUNCIL OF EUROPE "POLICY GUIDELINES ON ACCESS TO HOUSING FOR VULNERABLE CATEGORIES OF PEOPLE".

The **Report on Access to Social Rights in Europe**, officially launched at the Malta Conference on Access to Social Rights in November 2002, analyses the obstacles impeding access to different social rights, **including the access to housing**. Using a multidisciplinary approach, the Report gives examples of how obstacles are being overcome, examines integrated measures implemented in the member states of the Council of Europe and identifies the principles on which measures to improve access to social rights should be based. Finally, the report develops cross-sectoral policy guidelines aimed at facilitating access to social rights¹².

The Group of Specialists on Access to Housing (CS-LO) of the Council of Europe adopted in 2001 **Policy Guidelines on Access to Housing for Vulnerable Categories of People** (CS-LO (2001) 25). These recommendations include advice on how to develop a comprehensive legal framework on access to housing for vulnerable categories of persons, taking account of market constraints and opportunities, and respecting international standards, to support national housing policies. The Council of Europe is working with its member states providing legislative advice in order to implement and effectively enforce laws and regulations to prevent any discrimination in access to housing and implement a transparent system of property rights and adequate administrative implementation of property legislation.

The Council of Europe strongly advocates that housing policies at all levels should meet the needs and requirements of vulnerable categories of persons. According to the *Policy Guidelines*, all governments should promote shelter and support basic services and facilities for education and health for the homeless¹³, displaced persons, women and children, persons with disabilities, older persons, victims of natural and human-made disasters and people belonging to vulnerable and disadvantaged groups, including temporary shelter and basic services for refugees. Governments should

⁶ The following countries have signed the **Revised European Social Charter**: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Greece, Iceland, Ireland, Italy, Lithuania, Luxembourg, Moldova, Norway, Portugal, Romania, Russia, San Marino, Slovakia, Slovenia, Spain, Sweden, Ukraine, United Kingdom.

⁷ The following countries have ratified the **Revised European Social Charter**: Albania, Bulgaria, Cyprus, Estonia, Finland, France, Ireland, Italy, Lithuania, Moldova, Norway, Portugal, Romania, Slovenia, Sweden.

⁸ Seven countries have accepted Article 31: Finland, France, Italy, Norway, Portugal, Slovenia and Sweden (information updated as of 26 June 2003).

⁹ http://www.coe.int/T/E/Human_Rights/Esc/2_General_Presentation/SocialCharterGlance_aug02%20.asp#TopOfPage

¹⁰ "Organisations entitled to lodge complaints with the Committee: - In the case of all states that have accepted the procedure: 1. the ETUC, UNICE and the IOE ; 2. Non-governmental organisations (NGOs) with consultative status with the Council of Europe which are on a list drawn up for this purpose by the Governmental Committee; 3. Employers' organisations and trade unions in the country concerned; - In the case of states which have also agreed to this: 4. National NGOs" (quoted from the European Social Charter's official website).

¹¹ http://www.coe.int/T/E/Human_Rights/Esc/2_General_Presentation/SocialCharterGlance_aug02%20.asp#TopOfPage

¹² The report will soon be available in no fewer than sixteen languages – Armenian, Bulgarian, Bosnian, Croatian, Czech, Dutch, English, French, German, Italian, Lithuanian, Moldovan, Portuguese, Romanian, Russian and Spanish.

¹³ The report will soon be available in no fewer than sixteen languages – Armenian, Bulgarian, Bosnian, Croatian, Czech, Dutch, English, French, German, Italian, Lithuanian, Moldovan, Portuguese, Romanian, Russian and Spanish.

¹⁴ The Council of Europe published in 1993 a **Report on Homelessness**, prepared by the Study Group on Homelessness, composed by internationally renowned experts who carried out a research in twenty-one European countries. The comparative study contains the results of their work as well as a series of wide-ranging proposals for social and political action. See also: Council of Europe Steering Committee on Social Policy, Childhood Policies Project, Street Children, SO-COORD I (94) Report and Children in Conditions of Vagrancy, Group of Experts on Vagrant Children (PC-VA), CDCS PC (2000) 3



identify and support approaches to cope with the urgent shelter requirements of returnees, internally displaced persons, and victims of natural disasters (CS-LO (2001) 25).¹⁵ In this context, it paid specific attention to the problems in the area of housing of one particularly vulnerable group, the Roma/Gypsies and Travellers.

Recommendations¹⁶ aiming specifically at improving the housing situation of the Roma population were elaborated by a group of experts involving Roma representatives and architects. The Member States are urged to adopt specifically targeted approaches to cope with the problems facing the Romani communities and at the same time to mainstream Roma concerns in the area of housing into national housing policies.

3. FROM POLICY TO PRACTICE: THE ROLE OF THE COUNCIL OF EUROPE DEVELOPMENT BANK (CEB) IN THE HOUSING FIELD.

The Council of Europe Development Bank (www.coebank.org), since its creation in 1956, has been involved in granting loans for various projects related to housing¹⁷. The Bank's priority objective is to help to migrants, refugees, internally displaced persons and victims of natural and ecological disasters. Projects in this sector very often include the construction of permanent or temporary housing, or the rehabilitation of housing stock damaged by catastrophes, such as earthquakes or floods. The Bank also grants loans for the construction of social housing. It has a long track record of financing housing schemes in countries such as Germany, Spain, France and Italy, and now increasingly finances projects in the transition countries. In addition to the construction of new housing, the CEB loans may also finance modernisation and rehabilitation of existing stock, in order to provide adequate and safe housing for the inhabitants, to increase its capacity to withstand natural disasters, or improve energy efficiency in old housing stock. Over the past decade, the total amount of loans approved by the Bank has totalled €15.4 billion, of which €2.4 billion was for the housing sector (15%). Only in 2002 the Bank approved some €564 million in loans for social housing.

4. THE REGIONAL DIMENSION OF THE RIGHT TO HOUSING: THE COUNCIL OF EUROPE SOUTH EAST EUROPE HOUSING NETWORK.

In the framework of its activities under the **Initiative for Social Cohesion of the Stability Pact**, in 2001 the Council of Europe launched four **South East Europe Strategic Networks** in the fields of **housing**, as well as health, employment and social protection. The Housing Network is composed of two senior officials responsible for housing policy and housing finance from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Romania, the Former Yugoslav Republic of Macedonia, Serbia and Montenegro and more recently Moldova. The goal is to review the current situation and challenges of specific topics relevant to the policy area of the particular thematic network.

Within the context of the **SEE Housing Network**, one of the results of the 1st meeting held in Skopje was the release of a report on **"Access to Housing in South East Europe"** (SEER/Housing (2001) 2). The main findings of the review were supported by the findings of the joint Council of Europe- Council of Europe Development Bank and UN-HABITAT event in Belgrade 25-26 February 2002 on **"Making Cities Inclusive: A Consultation on Providing Security of Tenure and Good Local Governance in South East Europe"**. At the 2nd Housing Network Meeting (Zagreb, December 2001) Housing Network officials discussed the need of housing finance instruments with the presentation of the paper on **"Financing of Housing in South East Europe"**. (SEER/Housing (2002) 1).

A **High-level Housing conference**, jointly organised by the Council of Europe Development Bank and the World Bank under the auspices of the Initiative for Social Cohesion of the Stability Pact for South-Eastern Europe, gathered 15 ministers in charge of housing and finance from South-Eastern Europe and 10 international organizations in Paris on 23-24 April 2003. Social, economic and financial challenges of the housing sector were discussed, among which the legal, regulatory and financial conditions to maintain property, developing the private rental housing sector; finding the right balance between private initiative, private finance and public support; making the housing sector an engine of growth and facilitating labor/labour mobility. The Conference was the occasion to discuss the housing situation and the particular needs facing low income groups, refugees, IDPs (Internally Displaced Persons) and other vulnerable groups¹⁸. On this occasion, **the Council of Europe**, highlighted the importance of housing for South East Europe social policy development and access to social rights and the corresponding responsibilities of national governments recognised in the Council of Europe's Revised European Social Charter of 1996 and its Art. 31 on the right to housing, which has been signed or ratified by several SEE countries.

¹⁵ For a full text of the **Policy Guidelines**, see: Council of Europe, Policy Guidelines on Access to Housing for Vulnerable Categories of People (CS-LO (2001) 25).

¹⁶ See Document MG-S-ROM (2000) 3: Memorandum on problems facing Roma/Gypsies and Travellers/Travelers in the field of housing. A Recommendation on the same topic is to be adopted soon by the Committee of Ministers.

¹⁷ Information about the Council of Europe Development Bank, its social mandate, countries and fields of intervention as well as a description of its current investments can be found on the Internet at <http://www.coebank.org>. Additional information can be found in the **2002 Report of the Governor, Council of Europe Development Bank**.

¹⁸ The Joint Programme between the Council of Europe and the Council of Europe Development Bank

6. PROSPECTS: THE LAUNCH OF A NEW INTERGOVERNMENTAL ACTIVITY ON HOUSING IN 2004.

The Council of Europe continues to be very active in promoting access to housing in its member states, giving both legislative and policy advice, and carrying out assistance activities. A 3rd South East Europe Housing Network Meeting is being planned for the end of 2003 where the most recent evolution of the housing legislation in South East Europe will be explored, with a particular focus of the progress in the signature and ratification of the European Social Charter (article 31 on the right to Housing) in the region. Workshops on access to housing are planned at the end of 2003 and in 2004 for the Russian Federation (Moscow region) and South East Europe.

Recognising the importance of access to housing as a fundamental right in the fight against poverty and social exclusion, The European Committee of Social Cohesion has decided to launch a new intergovernmental activity in the field of housing as its contribution to the Strategy for Social Cohesion. This activity will be approved by the CDCS and carried out by a group of specialist starting in 2004. Being one of the fundamental issues in the housing sector in most European countries and a cornerstone of any strategy fighting poverty and social exclusion, the study of the various dimensions of **social housing** will be proposed as the possible focus of this new intergovernmental activity. •

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The Application of the Right to Housing in the EU

Responsibility at several levels of government of Member States of the EU – Information from the International Union of Tenants <http://www.iut.nu/> (September 2000)

Responsibility for guaranteeing the right to housing is shared between local authorities and the central government, although the dividing line is not always clear:

	Central government	Level of devolution
Austria	No	Provinces
Belgium	Yes	With the regional authorities
Denmark	No	Municipal authorities
Finland	No	Municipal authorities
France	Yes	-
Germany	Yes <i>de facto</i>	No <i>de facto</i>
Greece	Yes	-
Ireland	Yes	-
Italy	No	No
Luxembourg	No	Municipal authorities
Netherlands	Yes	-
Portugal	Yes	In collaboration with regional authorities and local government
Spain	No	Autonomous communities
Sweden	No	Municipal authorities
United Kingdom	Yes	-

In Germany, the Länder are responsible for guaranteeing the right to housing, but in fact they do not do so – it is the central government which assumes this task.

Responsibility may be shared between the central government and towns or districts. Spain and Portugal stand out here because of the extensive collaboration between the central government and the autonomous communities.

Eight countries stated that the central government is responsible for access to housing.



Forced Eviction: A Violation of the Convention Against Torture

By **Bret Thiele** - Senior Legal Officer and Coordinator of the Litigation Programme of the Centre on Housing Rights and Evictions (COHRE), an international human rights NGO based in Geneva with offices around the world. COHRE works to promote and protect housing rights for everyone, everywhere, including by preventing and remedying the practice of forced eviction. For more information please visit the COHRE website at <http://www.cohre.org>

Introduction

Housing rights are human rights, and thus victims of housing rights violations can turn to several human rights mechanisms in order to enforce those rights. While the practice of forced evictions is often thought of as a problem faced by those living in the developing world, they all too often occur in Europe as well.

While forced evictions violate the full spectrum of human rights, and thus advocates working to combat forced evictions have relied not only on economic, social and cultural rights standards but also on civil and political rights, for example, the right to be free from arbitrary or unlawful interference with the home. Indeed, such protections have proven quite successful. Article 8 of the [European] Convention for the Protection of Human Rights and Fundamental Freedoms provides such protection, and litigation before the European Court of Human Rights has been used successfully for some years to provide remedies to victims of forced eviction. Indeed, advocates often turn to what are considered civil and political protection to enforce housing rights, particularly since many European States have yet to ratify the Revised Social Charter.

While such instruments and mechanisms should continue to be utilized by advocates working to prevent or remedy forced evictions, they do not represent the only legal avenues for redress. An often overlooked legal theory is that which is related to the prevention of torture and other cruel, inhuman or degrading treatment or punishment. A few resourceful and pioneering advocates have recognized the potential offered by such a theory, relying in particular on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture or Convention) and its monitoring body, the UN Committee Against Torture (CAT or Committee).

Forced evictions, as the UN Human Rights Commission affirmed in 1993, violate a range of human rights. As shelter is so integral to a safe, healthy and dignified life, forced eviction not only directly violates the right to adequate housing and the right to be free from arbitrary or unlawful interference with the home, but also jeopardizes a person's right to life, their

right to security of the person, their right to humane treatment, and their right to the highest attainable standard of health. As such, deliberate acts of forced eviction clearly constitute cruel or inhuman treatment, and under certain circumstances may amount to torture itself under international human rights law. In a monumental development, the Committee Against Torture has begun to recognize forced eviction as a violation of the Convention Against Torture.

Hijrizi v. Yugoslavia

Human rights advocates have recently turned to the individual complaint procedure of the United Nation Committee Against Torture, which receives complaints, or communications, from individuals or on behalf of individuals who claim to be victims of a violation by a State Party of the provisions of the Torture Convention. The Committee has recently found allegations of forced evictions to be admissible under this procedure.

For instance, CAT found forced eviction to be in violation of the Convention Against Torture, and by doing so not only provided a remedy to the victims of forced eviction but also provided human rights advocates with beneficial jurisprudence. On 2 December 2002, CAT held that the forced eviction and destruction of a Romani community in Serbia and Montenegro violated the Convention Against Torture, even though the eviction was not perpetrated by public officials. The case, *Hijrizi v. Yugoslavia*,¹ involved the forced eviction and destruction of the Bozova Glavica settlement in the city of Danilovgrad by private residents who lived nearby. Earlier, the perpetrators threatened to "exterminate" the community and "burn down" their houses. The Danilovgrad Police Department reacted by telling the Romani community that they should evacuate the settlement immediately as they, the police, would be unable to protect them. Most of the Romani residents fled their homes, leaving a few behind to protect their housing and other possessions. During the afternoon of 15 April 1995, the non-Romani residents entered Bozova Glavica shouting slogans such as "we shall evict them" and "we shall burn down the settlement." The crowd soon began to break windows and set fire to the housing, resulting in the entire settle-

Forced evictions, as the UN Human Rights Commission affirmed in 1993, violate a range of human rights.



ment being levelled and all properties belonging to its Roma residents completely destroyed. Several days later the debris of Bozova Glavica was completely cleared away by municipal construction equipment, leaving no trace of the community.

Article 16 of the Convention Against Torture states in relevant part that "Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

The Committee found that the Police Department did not take any appropriate steps in order to protect the residents of Bazova Glavica, thus implying acquiescence in the sense of Article 16 of the Convention, and that the burning and destruction of settlement constituted acts of cruel, inhuman or degrading treatment or punishment within the meaning of Article 16. Consequently, the Committee held that the Government of Serbia and Montenegro had violated Article 16 of the Torture Convention by not protecting the rights of the residents of Bozova Glavica. For the first time, and although the right to compensation is not expressly provided in the Convention for victims of acts of ill-treatment other than torture, the Committee concluded that the State Party should compensate the victims of this violation.

Conclusion

Human rights advocates, including housing rights advocates, should not overlook the Convention Against Torture, as well as other instruments prohibiting torture and other cruel, inhuman or degrading treatment or punishment, in their work to prevent or remedy the practice of forced evictions. Unfortunately, pronouncements from United Nations treaty-monitoring bodies, in and of themselves, all too often fail to prevent or remedy human rights violations without the active and organized advocacy of NGOs and grass-roots organizations on the ground. Because of the degree of stigma associated with a violation of the Convention Against Torture, advocates may be able to get media and public attention that would otherwise not be forthcoming without that increased degree of stigma. This increased attention, in turn, may very well provide the necessary pressure on a State and thereby make the difference between a successful and an unsuccessful advocacy campaign, which in real-world terms equates to whether a gross violation of human rights will or will not take place or will be or will not be remedied. So, again, while all avenues for prevention or remedy of forced eviction should be considered, it is important not to overlook the protections and merging jurisprudence offered under a prohibition of torture theory. •

¹ Communication No. 161/2000: Yugoslavia, UN Doc. CAT/C/29/D/161/2000 (2 December 2002).

Means of recourse

<http://www.iut.nu/> (September 2000)

When the right to housing is not protected, several avenues of recourse are available:

*accommodation centres;
emergency reception centres;
hotels or shelters run by social agencies;
initiatives by not-for-profit associations.*

European governments have preferred to take actions of broader scope:

In **Belgium** and **Luxembourg**, an emergency programme to increase social solidarity, consisting of the payment of a minimum income (called MIN-IMEX in Belgium) to homeless people, along with social assistance (provision of guarantee, payment of rental deposit) and a moving-in premium.

In **Denmark**, municipal authorities are obliged to assist tenants who default on payment.

In **Finland**, a foundation has been formed (comprising the Church, the Red Cross, not-for-profit associations and the confederation representing the building industry) to provide housing for the homeless and for refugees. It has succeeded in housing 2,500 households in 10 years.

In **Ireland**, municipal authorities have generously subsidized social housing for low-income groups in recent years.

In **Luxembourg**, a not-for-profit association helps disadvantaged persons to find employment (by agreement with the ministry for family affairs).

The **Netherlands** has a policy to facilitate the housing of the homeless, and the government is working on specific legislation in this area.

Portugal has the «Porte Amie» programme for the purpose of housing the homeless; the central government is obliged to help disadvantaged persons gain access to housing.

In **Spain**, the government and the autonomous communities have established a co-ordinated set of minimum services.

In **Sweden**, local authorities have a kind of moral – but not a legal – obligation to house the homeless. If a homeless person is not accepted in a social housing unit, the town must find a solution. In addition, the government is drafting a bill which will formally oblige municipal authorities to provide housing for the people living in the town or district and to set up a housing agency there.

In the **United Kingdom**, town authorities must provide advice and assistance to those social categories not designated as having priority (i.e. excluding the elderly, the disabled, households with children, the severely maimed).

Once again, Austria stands out from the rest: it has no programme whatsoever in this field. A policy group has been formed to draft a law to assist the homeless. The adoption of such legislation, aimed at combating social exclusion, could help to reduce the number of homeless people in Austria.

Interview with Chester Hartman

Executive Director of the Poverty & Race Research Action Council

<http://www.prrac.org/> - Washington, DC



FEANTSA had the opportunity to interview Chester Hartman by telephone at the beginning of September. Mr Hartman has written several important articles¹ on the Right to Housing in the United States and is a key advocate for the adoption and application of more social rights in the USA. The interview provides a very interesting comparison between the European and American approaches to the topic.

FEANTSA - Is the Right to Housing enshrined in the American Constitution?

CH – There is no constitutional right to housing as such, and few housing entitlements. Ironically, homeowners enjoy the largest entitlement in the US housing system: the right to deduct all spending on property taxes and almost all mortgage interest payments from their taxable income base, an enormous indirect and highly regressive subsidy.

FEANTSA – Without an official right to housing, what other legal instruments are available?

CH – A handful of localities — for example, Washington, D.C. and New York City — have at one time or another adopted a right to shelter. And while this may be a step towards a right to housing, some people argue that a right to shelter serves sufficiently to get roofs over people's head, which can be seen to slightly undermine the fight for a right to housing.

FEANTSA – What does exist in terms of housing rights?

CH – There are housing and building codes, anti-discrimination laws, rent withholding laws, just cause eviction statutes, etc. And of course there are entitlement programmes in other areas: Medicaid and Medicare, school lunches for low-income families, food stamps, etc. But homeowners have the strongest set of rights, as mentioned before. It's really a question of resources; the entitlements cannot be extended without more funding.

FEANTSA – How would you envision the transition, should the USA decide to award the right to housing to its citizens?

CH – The implementation of a right to housing would have to be done in steps. Priorities and programmes would have to be developed, and of course it would be very expensive. The key issues at stake are: location, race and class. We would have to think about what kind of programmes should be developed, whether, for example, the housing stock should be increased, or programmes that rely on the existing private stock by providing vouchers or other subsidies.

The right to housing couldn't be implemented without massive restructuring of the housing system in the USA. Certainly we would have to look at the major issues: land acquisition, financing, non-profit management of housing, etc.

FEANTSA – Individual rights are very important to Americans; their Constitution and Bill of Rights are vital parts of the American way of life, of legislation, of the American psyche. Would it be so difficult to create a new right to housing? Why?

CH – There needs to be more consciousness about the issue. More organisations and organisers need to be involved in the fight for a new package of rights. We need to work together with different sectors – with the education system, the criminal justice system, the health system – in order to work as a coalition for reform. A new package of rights encompassing the right to healthcare, the right to education, and the right to housing is an achievable goal, but a wider field of actors needs to be involved in the fight.

FEANTSA – What is the position of the United States in terms of the international treaties on human rights that include mentions of housing?

CH – Well, to cite an example, at the last United Nations Habitat conference, the US Government lobbied very strongly to change the wording of the conclusion so as not to tie itself to an endorsement of the right of access to decent housing.

FEANTSA – Which level of government is responsible for housing legislation in the United States?

CH – All three levels, Federal, State and Local, can pass legislation on housing and rights associated with housing. Obviously it all comes down to a question of resources, however, and should we get a right to housing, it needs to happen on Federal level, where the financial resources are, in order to be taken seriously and have an impact.

Some states have separate programmes and several localities have developed housing trust funds to try to address the housing problem. Localities also have important powers to change zoning regulations and implement other standards.



FEANTSA – Are the courts helpful in upholding the rights – should there be any – of low-income tenants who face eviction?

CH – The courts generally have not been amenable to the housing rights argument in eviction cases; they tend to side with property owners.

(In the December issue of Housing Policy Debate, Chester Hartman and David Robinson will publish "Evictions: The Hidden Housing Problem." Link: Housing Policy Debate <http://www.fanniefoundation.org/programs/hpd.shtml>)

FEANTSA – Are NGOs involved in the campaign for a right to housing?

CH – There is a wide variety of NGOs working to combat homelessness and housing distress. Many organisations work to influence policy at a local level. The National Low Income Housing Coalition is the biggest national lobby organisation and has succeeded in getting the endorsement of more than 200 representatives in the US Congress for their National Trust Fund legislation, which will provide a steady stream of targeted subsidies for low-income housing of all sorts. <http://www.nlihc.org/>

FEANTSA – Would you say that the issues surrounding race and class play a big role in the whole debate on housing and homelessness?

CH – Definitely. We are a society in which people with resources do not want to live with people on lower incomes. White people do not want to live with Blacks and they do not want to send their children to schools with a large proportion of non-whites. The issue has to be dealt with; it cannot be ignored any longer as if it will just go away if nobody talks about it. An example of this naive belief that ignoring the problem will solve it is Proposition 54 in California, which is on the October 7 ballot, which calls for the State to stop collecting data on race.

There are disproportionately high numbers of non-whites who are in housing distress and this problem must be faced head-on and addressed.

The United States also has dramatic geographical differences. In California, Texas, Florida and New Mexico, as well as in 48 of the 100 largest cities in the country, the majority of the population is now non-white. Tensions, especially post-September 11, have been growing and more hate crimes are being perpetrated against non-whites.

FEANTSA – Is the right to housing a key issue in the general debate on homelessness and housing in the United States?

CH – There is not much debate on whether the US should have a right to housing; it is too far away for it to be part of the discourse of politicians and policy makers.

The discussion on a right to housing also raises the more general issues of poverty and welfare. In this area, the issues of race and class are decisive. There is a great divide in the United States, evidenced by the growing disparity between rich and poor. The vast majority of Americans are well-housed, and not many are interested in the situation of the 20-30% who are not.

We are involved in working to redefine the housing problem and to frame it in terms of affordability. It's not acceptable that low-income families are having to pay 50%, 60% or even 70% of their income on housing. A colleague at the Univ. of Massachusetts-Boston, Michael Stone (michael.stone@umb.edu), has been working to redefine 'affordability' and has come up with a new definition, which he terms of 'shelter poverty' (see his book of the same name). He divides household costs into shelter and non-shelter basics (food, clothing, transportation, medical care, etc.) and notes that larger and poorer families must spend greater portions of their income on their non-shelter basics, leaving them less left over for housing. Thus, any fixed percentage as a standard for what should be spent for housing—25%, 30%, etc. – is invalid. Using federally promulgated detailed model minimum budgets, last published in the early 80s but which he has updated via government consumer price index data, he finds that some 15 million households cannot spend one cent on housing if they are to have sufficient income left over to spend on non-shelter basics at the government's own minimum standard. Clearly, that new and more realistic definition means that the amount of money and government subsidies required to live decently will have to be substantially increased.

FEANTSA – Thank you very much for taking the time to answer our questions. It is interesting to learn about how the USA is tackling the question of a right to housing in light of its growing homeless problem. •

¹ "The Case for a Right to Housing" – Chester Hartman, published in Housing Policy Debate, Volume 9, Issue 2, Fannie Mae Foundation 1998, p. 223 – 246.

Scotland moves closer to the right to housing

By Tom Roberts – Scottish Council for Single Homeless -

<http://www.scsch.co.uk>



The rights of homeless people in Scotland are undergoing significant change at the moment. Two pieces of recent legislation are being rolled out - The Housing (Scotland) Act 2001 and the Homelessness etc (Scotland) Act 2003. This process began with the election of the first Scottish parliament in 1999 and it is expected to take until 2012 to fully implement the new framework of rights.

As we will see, this long implementation period means it will probably be some time before homeless people "feel" that their rights have been enhanced. However the changes will eventually mean a very different experience for those who present as homeless in Scotland in years to come. The current challenge is to get the implementation phase right and ensure it is properly resourced. This is critical as new rights without the resources to implement them are meaningless.

It is important to distinguish the situation in Scotland with that in some other European nations where citizens enjoy a right to housing guaranteed by a constitution. The UK has no written constitution and it would be untrue to say that Scotland's new homelessness framework gives a cast iron right to housing. By 2012 though, we will be closer than ever to a right to housing.

More on this later but it is worth reviewing how Scotland came to be at this point.

The profile of homelessness in Scotland shows that the number of applications is at record levels – around 46,000 per year. However that number has plateaued with little change in the last 5 years.

The figure includes a substantial number of repeat presentations (around 27%). Therefore the total number of households affected annually is roughly around 34 000. That is a significant problem in a country with a population of less than five million.

The election of the first Scottish Parliament in 1999 saw a concerted effort to tackle the problem. A Homelessness Task Force was formed with Scottish Council for Single Homeless amongst its members. That Task Force provided the blueprint for the new legislation that has been passed and continues to provide guidance for organisations and government in the fight against homelessness.

The Homelessness Task Force was set up in 1999 by the Scottish Executive to: "review the causes and nature of homelessness in Scotland; to examine current practice in dealing with

cases of homelessness; and to make recommendations on how homelessness in Scotland can best be prevented and, where it does occur, tackled effectively."

Its first report made recommendations about immediate changes to legislation, which were incorporated into the Housing (Scotland) Act 2001.

The final report concentrated on 5 main areas which were seen as key to tackling and preventing homelessness. These are radical and far reaching changes to the homelessness legislation; housing supply and policy; benefits issues, prevention of homelessness and resolving homelessness. The recommendations that were contained in the final report have been brought forward as legislation in the Homelessness etc. (Scotland) Act 2003.

In order to understand how these changes will affect the rights of homeless people and the existence of a "right to housing", we need to look at the current legal framework.

The current situation for a homeless applicant in Scotland can be described as a series of four hurdles with local authorities as the "gatekeepers" to housing and homelessness services. When someone presents as homeless to a local authority, the council firstly inquire whether the applicant is homeless or threatened with homelessness (as defined in the Housing (Scotland) Act 1987).

If they are satisfied that he or she is homeless, they must inquire whether the applicant has a priority need (this includes situations such as homelessness because of an emergency such as a fire or flood, or other disaster; pregnancy, dependent children etc)

There are, however, a further two hurdles which can restrict an applicants rights to housing and homelessness services. These are Intentionality and local connection.

The local authority must consider whether the homelessness (threatened or actual) is intentional or unintentional, in the light of the individual circumstances of the applicant. For homelessness to be judged intentional, the applicant must have deliberately done or failed to do something as a result of which he or she ceases to occupy accommodation which was available for his or her occupation, and which it was reasonable for him or her to continue to occupy. If the applicant is found to be intentionally homeless and in priority need, they must make accommodation available to them. If an applicant has been assessed as unintentionally homeless and in priority need, a local

The profile of homelessness in Scotland shows that the number of applications is at record levels – around 46,000 per year.



The report recommends the phased extension over 10 years of the categories of people considered 'in priority need' until it covers every homeless person and is effectively abolished.

authority may decide that neither the applicant nor any member of his or her household has any local connection with its area, but does have a local connection with the area of another local authority in Scotland, England or Wales. The 'local connection' rules do not apply to Northern Ireland, nor to countries outside the United Kingdom. If this is found to be the case, the original local authority may notify the other local authority of its view that the applicant has a local connection with it. The applicant can then be "referred" to another authority.

These are significant hurdles to overcome. Imagine facing them if you and your family are in the midst of a housing crisis and your knowledge of the law is limited. Removing these hurdles and allowing local authorities a more enabling role is a key theme of the new homelessness framework which we can now look at in more detail.

The 2003 Homelessness Act begins to dismantle these hurdles and builds on the new package of rights contained in the Housing (Scotland) Act 2001, which guaranteed a minimum package of rights to all homeless people for the first time. The 2003 Act does not seek to change the definition of 'homeless' in the legislation, but makes radical proposals on 'priority need', 'intentional homelessness' and 'local connection.'

The report recommends the phased extension over 10 years of the categories of people considered 'in priority need' until it covers every homeless person and is effectively abolished. The eventual abolition of 'priority need' fulfils a long-standing SCSH aim.

The definition of Intentional homelessness is not changed. The duty to investigate intentionality is replaced by a power to do so. A new duty towards intentionally homeless people in priority need is created. They will have to be offered a short Scottish secure tenancy with appropriate

support. The support offered will be to enable the tenant to convert the short tenancy into a full tenancy.

Local connection will be suspended. It is not possible to gauge how much this provision is used at present to filter out applications before they are made. If the suspension causes problems the 'local connection' provision can be reinstated in particular areas or the whole country.

The challenge for the coming years is to ensure an adequate supply of affordable housing. The Task Force report recommended that local housing strategies should identify what improvements are required in the supply and quality of affordable housing. This should be linked to requirements in order to meet the challenges posed by the legislative changes described above. More entry level, readily accessible accommodation for young people is urgently required and all authorities should enable access to rent guarantee schemes.

In conclusion, the legislation recently passed by the Scottish Parliament will remove many of the hurdles faced by homeless people in securing permanent accommodation. The Acts set the scene for a major culture change in the way we treat homeless people in Scotland with a new focus on assisting homeless people to be housed successfully, rather than on investigating how they might be rationed out of the system.

Two crucial issues need to be addressed if the new Act is to work effectively. The first is to ensure that there is sufficient good quality rented accommodation available in the places people need to live - and that will require investment in social rented housing. The second is the role of support to households who need a bit of extra help in order to sustain their homes.

We may not yet have a right to housing but with adequate resources, we could have the next best thing. •

The first Besson act (1990) – A major legislative text for the right to housing to take effect

By Michel Mercadié – Vice-President of FEANTSA



1. The affirmation of the right to housing in France, act by act.

One year after the Left was returned to power, the Quillot Act (1982) marks the beginning of the legal entitlement to housing. Affirming, for the first time, the fundamental character of a "right to housing," this act aimed to restore a balance in the rights and obligations between landlords and tenants, to the benefit of the latter.

As expected, landlords saw the change as a restriction of the right of ownership. Some even think that it contributed to the trend for private owners to reduce their interests and activities in social housing, noted in the 1980s. It did not, however, prevent the recovery of rental investments, in the beginning of the 1990s!

This act was repealed in 1986 by a Right-wing government that wanted to develop the real-estate supply, by returning to a free-market concept and enshrining the primacy of the right to property.

In 1989, the Left revived the objectives of the Quillot Act, albeit with greater flexibility. The Mermaz Act reaffirmed in fact the right to housing as a "fundamental" right and restored the balance between landlords and tenants.

It was then a matter of having this right take effect; this was the prime merit of the first Besson Act, which remains a reference for associations working with the persons without fixed abode.

Several acts have supplemented and improved the mechanism created by the Besson Act. The act of 1991, regulates the eviction procedure for the first time, and establishes a specialised court, competent in particular in granting time limits.

The first Fight Against Exclusion Act (1998) renewed the system of allocating social rental housing to achieve greater fairness and transparency. It also consolidated the guarantees for unpaid rent in order to limit evictions.

The second Besson Act (99) broke with the social blindness of tax relief measures aimed at promoting rental investment. The Besson 'write-off' actually introduces social compensation for a period of 9 years (with a limit of rent and of income for tenants). The social purpose of such housing subsidised by the State was thus secured.

(Similarly, the creation of the status of a private landlord is likely to bolster the social role of the private housing supply. More specifically, the owner of a dwelling may avail himself of a tax deduction, if he undertakes to rent said dwelling to low-income persons, at a rent lower than the free-market rate, for six years. This mechanism was bolstered in 2002 by a 50% reduction on the income derived from real-estate and letting to the most deprived groups).

2. The Besson Act.

The principles.

Far from being limited to reaffirming the fundamental nature of the right to housing, the Besson Act stresses its determination to "guarantee" (Article 1) and make this right a "duty of solidarity for the nation as a whole". More specifically, it affirms "the right to aid from the community to access and remain in housing, for all people experiencing particular difficulties..."

The tools.

Whereas lawyers may find fault with the Besson Act for not providing sanctions, NGOs are grateful that it has created permanent tools which, without question, have provided and continue to provide better access to housing for the most deprived groups.

The National Housing Council.

The Act founded a National Housing Council composed of representatives of civil society associations. It is in charge of drawing up an annual report of the actions undertaken and of giving opinions and recommendations.

The Departmental Action Plans for Housing the Underprivileged.

These plans are drawn up and implemented by the State and the departmental Assemblies. The other authorities, associations, public or private landlords and family allowance funds are duly involved. These plans define the beneficiaries, giving priority to persons without fixed abode. The plans assess the needs and decide on the means and resources necessary per "basin d'habitat" [i.e. town, its suburbs, and surrounding countryside considered as a single area]: financial aid, advice and support measures, increase in the housing supply, etc...

They are implemented through multi-year agreements, in particular with the associations.

Creation of the Housing Solidarity Fund (known by the French acronym FSL - Fonds de Solidarité pour le Logement).

Created in all "departments," (administrative regions in France) the FSLs are intended to provide financial aid (security, loans, guarantees, subsidies, etc.). They see to such advice and support measures as deemed necessary, and may grant guarantees to the associations that house the beneficiaries of the plans. The FSLs are financed by the State and by the governments of the departments.

Traveller reception scheme.

The Act requires all municipalities with more than 5000 inhabitants to provide reception facilities for travellers: reception areas, schooling for children, organisation of economic activities, etc.

The Besson Act is therefore both a very political and very concrete law, one that can be said to have paved the way for the Fight against Exclusion Act (1998).

I would not want to close this brief presentation without paying a tribute to my friend Louis Besson, who for those of us working in associations, was a important and good minister for housing, attentive to the issue of access to housing for the most deprived groups. I should like to point out that he started the tradition of the annual meetings of EU Ministers for Housing. •



Down and out in London and Paris? Rights and remedies for the homeless

By Jane Ball - Dept of Law, Sheffield University



In 1995 Avramov surveyed European rights to housing. She also found that then Denmark did not have a constitutional right to housing, but had some of the best arrangements to help the homeless. She stressed the importance of legal and financial measures to put rights into effect.

Eight years later the United Kingdom still has no constitutional right to housing. Progress has been made in human rights generally because the Human Rights Act 1998 incorporated many of the civil and political rights into internal UK law. The right to housing is an economic and social right not covered by that law.

The United Kingdom does have an important remedy for the homeless. Since 1977, if you are homeless, eligible, in priority need and not intentionally homeless, a local authority must house you.

"Homeless" includes situations when a person is threatened with homelessness within 28 days, and where there is no home in which it is reasonable for the applicant and their family to live. People in priority need include pregnant women, dependent children, and those who are vulnerable because they are elderly or mentally ill. People who can reasonably be expected to live with them are also housed. Extra categories were added to the list in 2002 such as those suffering domestic violence and those leaving institutional care.

People do not have the right to be housed if they are "intentionally homeless", perhaps by failing to occupy property which they reasonably could or by failing to take action. This may sometimes exclude people who have failed to pay a mortgage or rent. Application of this condition is variable by different authorities. People applying can be transferred to different local authorities for housing if they have a local connection elsewhere.

If the applicants may be in priority need then they must be housed whilst an enquiry is made. People who are either intentionally homeless or not in priority need are still entitled to advice and assistance from the authority to help them secure accommodation.

There is a right for the applicant to have local authority decisions reviewed internally, and then appeal to the County Court on a point of law.

In Scotland the new assembly there has given the homeless improved rights under similar legislation. It is intended to expand these over 10 years to include all the homeless.

When an applicant is given accommodation, if they have little income it is possible UK housing benefit may pay the whole rent.

The homelessness legislation is not comparable to a constitutional right to housing. It is a narrow right to do something specific available to a limited number of people. Many healthy single people have no right under the legislation, and local authorities may reject a person as "intentionally homeless". Asylum seekers and certain others from abroad are also excluded.

Some traditional UK lawyers have trouble understanding the point of a constitutional right to housing which does not give an individual a remedy, claiming a house before the courts. The Human Rights Act 1998 does give an individual a right to complain before the courts if their civil and political rights are breached.

France, on the other hand, does have a right to housing which is of constitutional value. It does not give an individual the right to demand a house but it does form the framework for a good deal of public action against homelessness and poor housing condition. Subordinate legislation finds a legislative basis within constitutional rights. The right also imposes a duty on the government to act, although this may be a political consideration.

Members of parliament in France can object to legislation before it is promulgated if it is not in conformity with constitutional rights. Improvements in tenants' conditions may be objected to as an interference with the landlords' right to property. The rights are also a consideration in administrative decisions such as housing allocation and on occasion the right to housing has been used to delay eviction.

Both the UK and France have programmes to create access to housing, improve housing conditions and prevent unlawful eviction but there is a major difference. France has some important national measures to try and prevent lawful eviction. There are extra delays in eviction procedure, provisions for social reports and information to be supplied to the person affected about sources of help. The *Fonds de Solidarité Logement* (Housing Solidarity Fund) can pay rent arrears or arrange for social workers to support the person to threatened with eviction. There may also be an agreement between local government and other housing actors to try to prevent eviction, *une charte pour la prévention d'expulsion*. Eviction cannot take place in winter (unlike the UK). There is an extra procedural step when the government has to agree to the use of public force by the police for the actual eviction and further enquiries may be made. People in the UK are evicted by specialist court officials.

There are no major national schemes in the UK to prevent lawful eviction. This may be because eviction is more politically sensitive in France than in the UK. In France, there may be mass evictions from collective housing using the police and accompanied by demonstrations by organisations such as *Droit au Logement* and the *Fondation Abbé Pierre*.

In the UK there is even a procedure to expedite eviction in some cases, the so-called "accelerated procedure". Perhaps it is felt that anyone who is evicted and who is vulnerable will be re-housed under the homelessness legislation and that if they cannot afford the rent, this will be paid. Of course, it does not quite work out like that and there are calls for tenants in the UK to have to pay part of their rent. Thus it may be an anti-eviction scheme is needed and the Office of the Deputy Prime Minister has been encouraging such action. The recent Homelessness Act 2002 provides that local authorities should have a "homelessness strategy". A constitutional right to housing in the UK could create a permanent policy framework for this sort of action. •

The impact of property rights on housing vulnerable groups



By Donal MacManus – Irish Council for Social Housing -

<http://www.icsh.ie/>

Review of property rights in Ireland

Currently the Irish government are undertaking a review of property rights. The government have asked an All-Party Committee on the Constitution to examine the relevant articles of Irish Constitution linked to property rights. There were a number of issues that the government asked the committee to examine and their impact on the relevant articles in the Irish Constitution. These included the price of development land, the zoning of land, compulsory purchase by public authorities of land and the right to shelter. The Irish Council for Social Housing (ICSH) made an written submission in addition to an oral presentation to the Committee as it was concerned that high land costs were contributing to the spirally cost of housing and that greater government intervention was required in the land market. The ICSH have argued that land reform is essential as the ownership of land directly affects the ability of non-profit housing organisations to house vulnerable groups like the homeless, elderly and people with disabilities. Land is one of the key means of production of housing and any distortion in its value will feed directly in the overall cost of housing.

Access to land

In the past, non-profit housing associations in Ireland obtained sites and buildings from local authorities at low-cost but this has severely reduced in recent years as local authorities land banks have reduced. Therefore, non-profit housing associations in Ireland have had to acquire the majority of new buildings and sites on the private market and have not had the resources to compete with private speculators and developers in acquiring cheaply priced land. The non-profit housing sector in Ireland in 2003 will build approximately 1700 new homes for vulnerable groups like the homeless and low-income households with the majority of the new housing now being built on more expensive private land.

The background to this recent examination of property rights has been that the government has been concerned that the cost of development land for housing has become a disproportionate cost of all new housing. This has had a negative impact for both private housing for homeowners and social housing provided by non-profit organisations. The current average cost of a new house in Ireland is €220,000 and €295,000 in Dublin, which now represents over 10 times the average industrial wage. Studies in Ireland in recent years have shown that

between 30-50% of all new households in different local authority areas are unable to move into their preferred tenure of homeownership and now require some forms of social¹ and affordable² housing. Although the Irish government had increased the budget for social housing to non-profit housing organisations since 1998, a significant proportion of the increased expenditure has been absorbed in higher land costs paid to landowners and private developers. This represents poor value for money for the government who could have built much more social housing for low-income and vulnerable groups if there was much less expenditure on acquiring land.

It is now estimated in Ireland that land represents 30-40% of the cost of all new housing with a small number of landowners in possession of the majority of residential zoned land particularly in the greater urban areas like Dublin. This trend³ of higher land costs is a feature of housing systems in many other EU member states. However a number of countries have adopted more interventionist policies to remedy this situation. In Italy for example, local authorities can buy land for social housing at not more than 50% of the market value whereas in Denmark the price of land usually has to be below 20% of the total cost.

In Ireland, the constitutional provisions relating to the ownership of land indicate that any citizen has the right to own property including land but these rights can be limited in the interests of the 'common good' and to the principles of social justice. Until recently, government legislation reflected a bias to an individuals' right to property over the common good. Recent legislation that was referred to the Irish Supreme Court under the Planning and Development Act 2000 (which allowed for up to 20% social and affordable housing in all new private developments) demonstrated that the state can interfere in the exercise of property rights where there is a social need like the provision of housing for low income groups. Indeed the Irish Supreme Court decision stated that this legislation

"was of sufficient importance to warrant interference with a constitutionally protected (property) right and given the serious social problems (lack of housing) which they (legislation) are designed to meet, they undoubtedly relate to concerns which in a free and democratic society should be regarded as pressing and substantial."

The current average cost of a new house in Ireland is €220,000 and €295,000 in Dublin, which now represents over 10 times the average industrial wage.



Access to land and property rights do affect homeless people as their ability to be adequately housed will be affected by governments' intervention in the land market.

ICSH submission on property rights

The ICSH¹ has argued that this decision should allow the basis for stronger government intervention through legislation on land issues. The ICSH has observed that the provision of housing for vulnerable groups like the homeless is largely determined by market forces and this begins with land acquisition. In Ireland it has been commonplace for landowners to receive a huge windfall when they have their land rezoned from agricultural land to residential status. This decision is undertaken by local authorities supposedly acting in the best interests of the community. However, none of this increased land value for the landowner created by the state is ever reclaimed. This concept known as 'betterment' is described as the increase in value of land which accrues to the owners of land as the result of the action of others, more than likely local authorities or other public bodies. In many cases landowners have accidentally benefited from public expenditure on new roads or other infrastructure beside their land which has helped to increase its value. Therefore, the ICSH believe that the community should be entitled to some of the increase in the price of undeveloped land which is attributable to works carried out by public authorities paid for by taxpayers. What can happen in Ireland is that the taxpayer can pay twice for social housing. Firstly, through new or enhanced public infrastructure which increases the value of land and secondly because of higher land costs, more capital funding is required to buy this land for social housing.

In some of its proposals to the All-Party Committee on the Constitution, the ICSH suggested that local authorities should have a pre-emptive (first choice) right to acquire land for social housing especially on newly rezoned land with compensation paid to the landowner being less than the market value. Pre-emption rights on land acquisition for local authorities are currently operating to varying degrees in France and Belgium (Flanders).

In relation to the Right to Shelter, which the All-Party Committee had asked for opinions on whether it needed to be included in the constitution, the ICSH argued that the Right to Shelter was a regressive and retrograde step for the government to consider. A failure to examine the right to shelter within the framework of rights to housing could result in minimalist and possibly punitive legal measures such as persist

in New York where a basic Right to Shelter exists. The provision of basic dormitory accommodation for homeless people, which the Right to Shelter could represent, would involve a step back from the internationally and nationally accepted standards for the provision of housing within the context of human dignity and human rights. The ICSH felt that such a narrow approach does not address the whole range of needs of homeless people, shelter being one.

The Irish All-Party Committee on the Constitution will possibly produce its findings by the end of 2003 and indicate whether there is need to have a Constitutional Referendum on changes to property rights. The ICSH have argued that the current Constitution is balanced towards the interests of private property owners and the common good and that new legislation on land issues are required not a change to the Constitution. Already many organisations and political parties in Ireland are calling for a price cap/control on development land for housing to lower housing costs. This could possibly polarise public opinion especially with 80% of the population being homeowners. Prices controls on land could also create 'under the table' deals for land acquisition.

Access to land and property rights do affect homeless people as their ability to be adequately housed will be affected by the government's intervention in the land market. It is pointless to keep arguing for extra resources for social housing to house marginalized groups like the homeless when the issue of high land costs is not tackled first otherwise these extra resources will be passed onto to landowners and private developers.

EU member states have different constitutional positions in relation to land ownership and subsequently different forms of government intervention. However, the general trend throughout the major urban centres in the EU is towards higher land costs. Indeed the new Accession Countries have an opportunity to establish more equitable interventions to landownership than currently exist in some EU member states like Ireland. Although access to housing is a key objective of FEANTSA, we must also remember that a prerequisite to access to housing is for housing organisations in many countries obtaining access to reasonably priced land. •

¹ Social housing- refers to housing provided by local authorities and housing associations for those who cannot afford to house themselves.

² Affordable housing-refers to housing provided by local authorities for marginal homeowners

³ Land for Social Housing-CECODHAS 2000

⁴ ICSH May 2003. Rights to Property and other issues

Right to Housing

By Eszter Somogyi, Sociologist, Researcher at Metropolitan Research Institute, Budapest

<http://www.mri.hu/english-opening.htm>



Legislation

In the socialist era housing provision was regarded primarily as a state responsibility and the right to housing was considered as a basic right of the citizens, however, it did not appear as such in the legislation. The main elements of the socialist housing provision system were the state rental housing distribution system, the state housing construction programs and the support of the private housing construction (to the extent of personal property).

With the transition to the market economic system the state responsibilities related to housing provision were abolished, the state rental sector was transferred to the ownership of the municipalities and the municipalities became responsible for the management of the social rental stock and for the local social housing programs. State subsidies to the housing sectors were almost entirely cut back including both the rental and the owner occupied sector. This process is reflected in the data that the share of housing subsidies in the GDP decreased from 5% in 1990 to 0.6% by 2000.

Although the state withdrew from the housing sector, the right to social security was declared in the Constitution, the interpretation of which was opened to a drawn-out debate. The debate was led mainly by the ombudsman for human rights and minorities and other civil organisations and focused on the whether the constitutional right to social security includes the guaranteed access to housing and to a minimum income. The Constitutional Court was asked several times to interpret the exact content of the debated paragraph and to determine the related state responsibilities. Summarizing the reactions of the Constitutional Court to such claims, it declared that the constitutional right to social security means a guarantee for a minimum subsistence level that is ensured by the entire system of social provisions. However concrete rights, such as related constitutional rights, cannot be deduced from the guarantee of minimum subsistence level. As a consequence neither the right to housing nor other concrete social rights can be regarded as constitutional rights, therefore the state has no legal obligations to establish any specific provision forms. To realise the right to social security of the citizens the state is obliged to establish, maintain and operate a social security and a social institutional system. Regarding the means and the

extent of the realisation of social rights, the state enjoys a relatively great degree of freedom. Nevertheless, responding to the claim of the ombudsman for human rights and minorities the Court stated that the state is obliged to provide the minimal conditions of the human existence, thus in the case of homelessness, if human life is disposed to a direct threat, the state has to provide an accommodation/shelter. To meet this requirement the state has already established a system to provide for the homeless.

As a conclusion it can be said that the right to housing is not a constitutional right of Hungarian citizens and the state has no obligatory task in the field of housing although it operates several housing subsidies that will be discussed later in this article.

The main features of the housing sector

At first glance, examining the **quantity indicators**, the Hungarian housing stock gives a quite satisfactory picture. The number of the total housing units is four million, although the share of the vacant units is quite high, amounts to 8%, so the number of the habited units is 3.7 million. The average number of households per inhabited units is 1.03 and the average number of persons per units is 2.67. The average size of the housing units is 75 square metre, which is higher than in the other central and Eastern European Countries. On the basis of this data it can be concluded that on the average there is no housing shortage in the country.

However the **quality indicators** show that a significant part of the housing sector has severe problems. The proportion of substandard units can be regarded as still very high despite significant improvements in the last decade. The share of the dwellings without running water and/or toilets is 15%, while damp and/or mould problems concern 14% of the dwellings. The share of the overcrowded apartments is 13%. The problem of the substandard apartments concentrates mainly in the older housing stock – one-third of the stock was built before WWII – in the smaller settlements, but also in older urban housing. The other major problem is the deteriorated conditions of the housing stock, a result of delayed renovations. The older urban housing stock built before WWII was practically not renewed during the forty

years of the Socialist period, and maintenance was also neglected in the pre-fabricated housing estates – whose original quality of construction was often very bad anyway – putting a large financial burden on the present owners.

Regarding the **tenant structure**, a significant change occurred during the nineties. As in other socialist countries, large state rental housing was developed before 1989 that consisted of the nationalised and the newly built stock. The share of the public rental stock was almost 30%, but in Budapest it reached 60%. During the transition period as part of the decentralisation process the public rental stock was transferred to the municipalities and also a heavy privatisation¹ process started that resulted in a dramatic decrease in the rental sector. By the year 2001, the public rental sector fell to 4%, and in Budapest to 8%, the majority – more than 90% - of the housing became owner occupied, the private rental sector, which operates mainly on the “grey” market was around 3%. Such a drastic shift towards the owner occupied sector has resulted in serious failures in the operation of the housing system.

Access to housing and the problem of affordability

As a consequence of the one-sided tenant structure the majority of people are forced to seek housing solutions on the **owner-occupied market**. The housing **Affordability** increased during the nineties but it is still below the EU average, which was reflected in the decreasing housing price – household income gap. While at the beginning of the nineties a household needed more than six years of income to buy a house it decreased to 5 years of income by the end of the decade². However there are significant differences in different regions and income groups. The lowest income quintile needs 11 years of income to buy an average house; on the contrary the highest income group only needs less than 4 years of income. In the depressed regions the affordability index is surprisingly also very low because not only the income level is lower than the national average but also the housing prices are extremely low. This latter fact reflects that in such regions there is no functioning housing market, which has severe consequences on the mobility of people living there.



Summarizing the reactions of the Constitutional Court to such claims, it declared that the constitutional right to social security means a guarantee for a minimum subsistence level that is ensured by the entire system of social provisions.

Although the housing affordability improved during the nineties there were negative changes in the housing mortgage developments. The housing lending fell to a minimum level and both housing transactions and construction were mainly cash financed. First home buyers and lower-income groups were particularly hard hit by this cash based housing finance system. Some subsidies (loan subsidies and lump-sum subsidies) for home construction still continued but were available only for new housing and because of the high inflation and high real loan interest rates did not make the housing loans much more affordable and did not increase significantly the access to housing.

The residual **public rental sector** offers very few opportunities for those who are in housing need. The municipalities have the right to develop their own policies regarding use, rents and distribution of the rental units. However, the physical condition of the sector and the social-economic features of the tenants considerably limit their options. The flats that the municipalities have continued to own and rent are generally small flats, in the worst condition and located in the most damaged buildings. In addition those tenants who were not able to buy their flats continued to rent. There is an unusually high proportion of pensioners, disabled pensioners, unemployed and low-income households amongst the 'tenant' population. Only a small proportion of the tenants have been able to move out of the rental sector, therefore the average number of vacancies that can be redistributed is far below the number of applicants waiting for such housing, which indicates the extremely low capacity of the public sector compared to the needs.

Regarding the municipal policies related to public housing, most of the housing rented by the municipalities is social housing and the majority of the rental units are still distributed according to social criteria. However some municipalities separated the most valuable stock and rent it on the basis of market rules, trying to generate more income into the sector. A few municipalities started to develop a non-profit sector as well. These tendencies are reflected in the rent levels and the distribution criteria as well. Rents generally were not increased significantly until the end of nineties but in the last few years more and more municipalities started to raise the rents primarily in order to cover the operating and maintenance expenditures and some of the renewal costs of the sector. The rent increases significantly affected low-income tenants despite the rent subsidy system provided by some municipalities.

Those who are not able to buy a flat or to get into the public housing sector have to rent an apartment on the **private rental market**. The exact size of the market is unknown, as a large part of it operates on the "grey" market, according to the official data the private rental market has a 3% share of the total housing stock. The rents in the private rental sector are several times higher than in the public sector. As a result of the "grey" market there is no sufficient legal regulation on the market and both the tenants and the landlords find themselves in situations that are not easy to defend. Additionally, no real support is available for tenants in private rental accommodation; therefore the majority of people stay only for short period in this market. Those who have to rent on the private rental market bear the greatest financial burden and experience more instability than the public tenants and owners.

The housing affordability issue has proven to be a severe problem in the case of **housing expenditures** as well. The dramatic increase of housing expenditures, the decreasing real wages and the high unemployment during the nineties resulted in many households being unable to cover the monthly costs of electricity, gas, water etc. and also the monthly payment of their housing loans. During the last decade a significant amount of arrears was accumulated and despite of the improving economic situation, the problem still exists especially affecting the lower-income groups. The statistical data are shocking, according to a survey last year 20% of the households have difficulties paying their monthly expenditures, among them 10-12% of the households have accumulated a considerable amount of debt and 3-4% of the households are permanently insolvent. Such a negative picture indicates the tendency that the transition to market economy has marginalized a significant part of society.

To support those households who have difficulties in covering monthly housing expenditures, housing allowance and arrears management subsidy systems exist. The regulation and the financing of housing allowance system is the responsibility of the municipalities and though the "Social Law" obliges the municipalities, some local administrations, mainly the smaller ones in the worse financial situation, have failed to introduce it. The other problem is that the level of provision of the housing allowance system differs in different municipalities. The eligibility criteria and the monthly amount of the allowance varies a great deal. In spite of the differences, it can be stated that in general, the amount of the allowance and the number of

those households who get access to the allowance are not sufficient compared to the need. The arrears management subsidy that was introduced this year is centrally regulated and financed jointly by the central government and the municipalities, but also requires a smaller contribution of the households who are in arrears. The introduction of such a subsidy can be regarded as a very positive development, although the eligibility criteria, especially the income limit, are so narrow that presumably many of those who are affected will be excluded from the subsidy.

The housing situation of those households who accumulated significant amount of arrears has become very unstable. There are more than ten thousand cases on the court because of such arrears and the court, in the case of those households who cannot cover their debt, has issued several thousand eviction orders. Despite the high numbers of eviction orders, the number of **actual evictions** is quite low. The reason for the relatively low number of evictions is that the municipalities and public service companies are still reluctant to take the moral responsibility for mass evictions, they would rather try to agree on other alternatives. In general the affected households move to a cheaper housing, often of worse quality; this is the case for both home owners and public rental tenants. Relatively few households become homeless directly because of eviction; the general tendency is the so called "housing slope" when households, which have permanent deficit regarding their income and housing costs, gradually move to worse and worse housing and at the end of this process they may become literally homeless.

Many of those who are evicted become **squatters** and usually occupy vacant public rental units. According to the newest regulation in the case of squatters, the notary of the neighbouring municipality can issue an eviction order and the case does not have to go through the courts. This regulation has made it much easier to evict the squatters.

Parallel with the negative tendencies of the marginalisation of lower-income groups, the spatial

differences has increased as well and signs of **segregation** have appeared. The most affected social group is the Roma communities. According to a survey of 1997, 100,000 Roma people live in segregated settlements, in very bad circumstances. Their homes feature extremely deteriorated conditions, many of their dwellings were not built originally for the purpose of human occupation, the houses are often without running water and without other facilities and the settlements are often located in polluted, unhealthy environments. Their legal title to their house is often uncertain as well. The government is planning to elaborate a coherent program to upgrade these settlements.

Housing policy

During the nineties the governments were criticised because of the lack of a coherent housing policy. It was only in 2000, that the Conservative government started to develop a new housing approach taking advantage of an improved economy. The new Socialist and Liberal government continued this policy and has made further developments; it seems that housing policy has become a priority in the governments' economic strategy. The main elements of the new housing policy are the introduction of heavily subsidised housing loans which are available both for the new and existing housing (however the degree of subsidies differs), the enlargement of the rental sector, both the public and the so called non-profit sector (the latter practically does not exist yet) and also the extension of social housing subsidies. It seems that the main priority is the stimulation of new construction both in the owner occupied and in the rental sector, because of its positive effect on economic growth. On the basis of the experiences so far, it can be concluded that the new housing subsidies basically have a regressive social effect, as it is mainly the upper-income groups who are able to get access to such subsidies. The new housing strategy is still under debate, and we will have to wait to see what kind of changes will be made in favour of the lower-income groups, but their chances has been diminished as the latest prospects for economic growth are not so favourable as previously forecasted. •

¹ In Hungary the public rentals were sold to the sitting tenants. Compulsory privatisation took place between 1993-1995, but also after up to now the municipalities has been continuing the privatisation. The nature of privatisation was so called „give away” privatisation that had political and fiscal reasons.

² The median house price to median household income index is shown here.

The main characteristics of Housing Policy in Romania in transition

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Although Romania starts its negotiations in order to fulfil the accession conditions to the EU in 2007, some aspects regarding policy reforms continue to be neglected or have been postponed *at infinitum*. This situation could seriously jeopardise not necessarily the chances to adhere to the European Union, but Romania's chances of narrowing the gap existing between the state of policy reform and the EU *aquis communautaire*. The housing sector - housing policy - is one of the most neglected sectors by both private market and investors, and most importantly, by central and local governments.

In order to understand the crisis in housing market¹ we will stress that the roots of the current situation come from the Communist period. Further I will discuss the housing crisis during the transition period, the emergence of the homeless phenomenon, housing conditions and the legal framework (the right to housing and agencies responsible with elaboration and implementation of housing policy).

Housing in the Communist period

The Communist regime solved to a great extent the housing shortage after the Second World War by a massive social program of building mainly cheap, low quality dwellings. Most of the new dwellings were built in urban areas as blocks of flats, roughly 30 flats/ block. In this context between 1950-89 a total of 5,460,300 houses (private and public) were built, of which 54.17% were constructed with State funds. In the last nineteen years of the Communist regime (1971-1989) about 141,000 dwellings were built each year, of which 120,000 (84.3%) were financed by the State. The rhythm of building was quite high, similar to most EU countries².

Social housing was allocated by the public authorities to people employed by the State according to recommendations from state factories/enterprises at which they were working. According to the Romanian Constitution of the Communist period, each citizen was entitled to the right to housing and the State had the obligation of providing adequate housing to each citizen. But in some way, this 'right' was strongly linked to the Communist ideology and propaganda. In fact, all the welfare benefits were conditioned by working in the state economic sector (and the quasi-totality of the production capacities, including land and forest, was state owned), which means that the Communist state promoted a kind of "wage welfare state". From the 1980s it was more and more difficult for more and more people to find a job³, and consequently more and more people/ families were excluded from a range of welfare benefits, including housing.

The unrecognised 3% unemployment rate (at the end of the 1980s) increased the amount of people who did not benefit from welfare. This resulted from the deepening economic crisis that Romania faced since end of the 1970s which also affected the housing sector, not only in terms of number of new units built⁴, but especially in terms of quality. The intention of the Communist regime to house every citizen was perhaps not at all a moral ideal but more propaganda and one of the ways of bribing citizens for their obedience. I could advance the hypothesis of a Communist "overcrowding policy" in terms of dwelling density (moving masses of people from individual housing to blocks of flats) which destroyed the "private space" and the "feeling of intimacy". This situation led to isolation, non-communication, suspicion etc., with very negative consequences after the fall of the Communist regime, at least in terms of community development programmes or lack of initiative/ interest in preserving the condominiums (blocks of flats with shared ownership). Also behind the Communist non-residential segregation policy (residential mixture of social classes) lay the hidden purpose of

promoting isolation (!), non-co-operation and non-associative behaviour. This situation, combined with the population struggle for everyday life (that was very common under the Communists), gave to the ruling party the possibility to exercise a huge control over the population.

Housing after 1989: the transition period

The housing situation turned around dramatically after 1989 and the housing crisis (not only the housing shortage) became more acute year by year. The housing crisis was exacerbated by the decision (moral and pragmatic on the one hand, but also populist) of the government elected in 1990 to sell off the social housing stock (the Law Decree 61/1990) to the tenants. The selling price was mainly symbolic, and most of the tenants could afford to buy the flats, a situation that led to a significant change in the structure of tenure: from about 67% owner occupation at the end of eighties to 78.7% at 1992 census and 97.0% in 2002 (NISES, 2003). The social housing stock decreased in 2002 to 2.7% of the total housing stock. Private renting represents about 1.1% (NISES, 2001). The positive side of such a policy was that the low-income class became home owners and gained an important asset with a high market value. The negative side was that by transferring to the population a low-quality housing stock, which was very difficult to manage, the public authorities (local and central) managed to relieve themselves of a huge administrative and financial burden.

The homelessness phenomenon

Homelessness is not a major issue in Romania if we use the very narrow meaning of the concept. There is no official definition of a homeless person and almost no official programme regarding this category at high risk of social exclusion. Consequently there is not even a rough official estimation of the number of homeless people in the sense of people living in the street (rough sleeping) and asylums/ shelters. According to the 2002 estimation of two NGOs based in Bucharest⁵, the number of homeless adult people in Bucharest is about 5,000, but because of low visibility of these people (very paradoxically!) it seems that the number has underestimated by 2000 - 3000. The number of homeless grows if we add the street children population (living almost permanently in the street), which is about 2,500 - 3,500 in urban Romania (Save the Children & UNICEF, 1998). In Romania the homeless phenomenon is primarily urban (where 52.7% of the total population lives⁶). Taking into consideration this narrow definition we could estimate that in Romania the total number of homeless could not exceed 10,000 people. Even if the number of homeless is not as high as in many other Western capitals, as a result of a lack of specialised support programmes the situation of the homeless is desperate. The statistic records of Medico-Legal Institute illustrate that on Bucharest streets, between 1997-2000, an average of 314 person died each year, the majority of them were homeless. Most of the homeless are single people, predominantly male, but recently more and more street families, as a consequence of economic difficulties and lack of support in keeping their homes.

But if we extend the concept of homelessness, according with D. Avramov (1995), we have to talk about adequate housing. The number of people who do not have adequate housing conditions (at least in terms of basic facilities) is increasing considerably. Overcrowding is a widespread phenomenon, as well as a lack of access to basic facilities such as heating in winter, drinkable water, running water, indoor toilets, bathrooms, permanent kitchens, sewage disposal, gas or even electricity.

Legislation/ institutional framework

Legislation

Romania has ratified all six major international human rights conventions (see UN, 2003), and as the 1991 Constitution stipulates (art. 11, paragraph 1) "the Romanian State pledges to fulfill as such and in good faith its obligations as deriving from the treaties it is party to". Even if some of the norms and principles included in the international human rights conventions were further reflected in the national legislative, they are less reflected in practice and other components of the institutional framework.

In the Constitution, the right to housing is not explicitly formulated, but is diffusely embedded in article 43 "The living standard", which stipulates "The state has the obligation to make decisions of economic development and social protection in order to provide to all citizens a decent living standard" (paragraph 1), and "Citizens have the right to pension, remunerate maternity-leave, health care in state hospitals, unemployment aid and other social assistance benefits stipulated by the law" (paragraph 2). Some articles are very specific regarding the right to education (art. 32), the right to health care (art. 33), and the right to work (art. 38).

Housing rights are embedded in Romanian legislation in the *Housing Law* (114/ 1996) which stipulates the principle that "free and unrestricted access to housing is a right to every citizen". Also the right to housing is further reflected in the *Law for Preventing and Combating Social Marginalization* (116/ 2002), but not in a very explicit way as in other European legislation.

The national legislative acts regulate some aspects, such as minimum standards of comfort for an adequate housing; the duties and responsibilities of landlords when renting (providing a minimum standard of comfort); the duties and responsibilities of tenant as well as sanctions which could lead to eviction; the conditions of granting social housing (Law 114/ 1996). The duties of local authorities regarding homeless people are very ambiguous. On the one hand, local authorities have the legal obligation of taking care of citizens who reside in their administration area. In such a case homeless people coming from another district are not the responsibility of the local authority. This is the case in Bucharest and the big cities, which act like a magnet, attracting both rich people, as well as very poor people, as a consequence of more employment opportunities. On the other hand, the 2002 Laws on *Preventing and Combating Social Marginalisation* and *Minimum Income Guarantee* (416/ 2001) introduced as an innovation, the right of homeless people to be covered by the measures of both laws. The MIG (Minimum Income Guarantee) beneficiaries that met the other two risk conditions embedded in the Law⁹ are recognized by local authorities as being marginalised persons and entitled to benefits by the marginalisation law. The Local Council should monitor the socially marginalised families in order to assure them a dignified life^{10 11}, according priority to young families below 35 years old.

In fact this legislative framework is working only in the sense of providing to the poorest a MIG, because providing adequate housing supposes that Local Councils have social housing in stock, or money for improving the housing conditions for poor people, which is not the case at all. Also, providing privileged access to job counseling services is a fantasy, again because most Local Councils do not have the capacity and competencies for this, and because of the deep economic recession and dramatic decrease in the number of employed people¹² and job opportunities (at least in the formal economy).

One of the most important political documents is the *National Anti-Poverty and Social Inclusion Programme* adopted by the Romanian Government in July 2002. By formulating some objectives, the Government implicitly recognises the right to housing of all citizens, but the problem is putting into practice those principles and transforming paper-objectives in concrete outcomes. The first objective

formulated refers to the *eradication of extreme poverty*, which comprises four sub-objectives among which two are related to housing:

- 1.2 To provide temporary shelter for homeless people; and
- 1.3 To diminish the number of dwellings with inhuman/ degrading housing conditions.

To meet the first objective, the elaboration and implementation by September 30th 2002 of a housing programme was mandatory, essentially the creation of a network of emergency housing for homeless people. This emergency housing network should comprise dwellings to shelter about 80 people in each of the 40 counties. In addition, a sufficient number of emergency housing had to be completed in order to cover all the situations by October 2003.

Regarding the second objective it was decided to develop a study for identifying the amount of housing with inadequate conditions. Consequently a building programme was launched to quickly put up cheap housing, hopefully a 'provisional' state (by June 2003), and to reduce by 25% until December 2004 the amount of housing with inadequate conditions¹³.

These objectives are not at all too ambitious and unrealisable, because they do not involve a huge amount of money if we take into consideration that the for the most part emergency housing does not have to be newly built, as old buildings can be transformed and fitted out (in urban areas each Local Council which encounters homeless problem could identify such buildings). But what is essential here is political will, and requires that public servants put less emphasis on their private interests, which work to the detriment of the public interest.

Institutional framework

The institutional framework consists of structures of central and local administration, and other structures such as private persons and associations (individual owners, owners associations of multi-storey buildings); organisations in the private sector (financial institutions, firms in the building sector, research institutes); NGOs (associations based on citizens' initiatives, professional associations, other actors of civil society). Among the structures of the *central administration* we have:

- (a) Central Government, which is responsible, according to the Housing Law 114/ 1996, for the implementation of housing policy¹⁴ in an unilateral manner across the country;
- (b) Ministry of Public Works, Transport and Housing (MPWTH), the main institutional actor, which has special responsibilities for the elaboration and implementation of housing policy: legislation-makers, house building, quality of construction, infrastructure and urban development;
- (c) The National Council for Human Settlements, set up in 1991, and having as principal responsibilities the setting up of the national housing strategy and the identification of necessary instruments for implementing it, as well as representing Romania in its international relations with UNCHS;
- (d) The National Agency for Housing.

The central administration transferred an important part of its responsibilities (in the housing sector, as well as in many other sectors in the decentralisation process) to *local administration* structures, with the purpose of stimulating their involvement in the development of housing policy and finding solutions to local problems. Such a measure, mainly positive in its intention, was not sustained by central administration by the creation of a macro and coherent framework, and was in reality simply a transfer of responsibilities from the central to local without the necessary funds and financial instruments. The resulting lack of involvement of local authorities, was in many cases welcomed and embraced by local cliques, however the lack of political will also blocked the initiatives of local authorities who actually wanted to deal with this issue. The involvement of local authorities in improving housing conditions and solving housing problems is mainly reduced to the granting of social aid for heating in the winter months to the MIG recipients.



In a recent study Luana Pop (2002) showed that the percentage of expenditures for public development and housing within the Total Local Budget Expenditure in 2000 was 39.6%¹⁴, administrative expenditures-18.9% and of social assistance expenditures 8.8%. The picture about capacity of local councils to develop projects becomes more clear if we add that 18% of them did not develop any projects in 2000, and among the city halls that developed projects,

93% developed only one. The proportion of city halls which did complete all their projects, no matter what their number, was 60%, while the average proportion of expenditure for public development and housing within these projects was only 15.1% (Pop, 2002). Also the structure of Local Budget Revenues registered a significant shift: if in 1997 the share of governmental transfers was 80.6%, in 1999, after decentralisation, the share was significantly reduced at 19.4%. •

Notes

¹ As it was also underlined by FEANTSA (2003).

² For example in the interval 1971-82 the Netherlands has the highest dwelling construction progression (about 8.1 dwellings/ 1000 inhabitants, according with Balchin, 1996: 90), while Romania (1970-80) built about 7.1 dwellings/ 1000 inhabitants.

³ This had happened even if not only the legal right but also the duty to have a job was enforced and guaranteed by the Constitution, which means that the Communist state had the legal duty to provide a job to every active citizen.

⁴ The dynamic of housing construction in the interval 1951-89 (Dan, 1999: 452)

	1951-55	1956-60	1961-65	1966-70	1971-75	1976-80	1981-85	1986-89
Number of new built units	433061	860849	905624	647668	751896	840644	706730	382193
Change of previous interval (%)	100.0	198,78	105,2	71,5	116,1	111,8	84,1	54,1

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989
Number of new built units	197846	161391	161213	146615	131901	105610	108137	110389	103267	60400
Change of previous year (%)	100.0	81.6	99.9	90.9	89.9	81.0	102.4	102.0	93.5	58.5

⁵ In the 1985-89 interval there was an increasing number of flats with one and two rooms from the category "comfort III" and "comfort IV" – very badly equipped and very small.

⁶ "Medicins sans Frontiere" and "Ioana House (Member of FEANTSA)" which completed separate studies in 2002. The main causes for becoming homeless are divorce, family conflict, loss of job/unemployment, sale of housing, cheating, home abandonment.

⁷ This is happening as a consequence of increasing 'militarisation' of public space (Davis 1992, cited by Edgar, 2002). Until 2001 the visibility of homeless in Bucharest was higher, but after this point the homeless have been dispersed by the police as they are considered to spoil the good image of current government, and second because the homeless are considered to be 'socially undesirable people'.

⁸ Source: INSSE, 2003, *Preliminary results of March 2002 Census*.

⁹ Law for Preventing and Combating Social Marginalisation (LPCSM 116/ 2002):

Art. 48. – The net income level which grants a person the right to be considered social marginalised is the MIG level embedded in the MIG Law 416/ 2001 for a single person, or a family.

Art. 49. – A marginalised person is understood to be a person who receives MIG or is living in a family which receives MIG, and is exposed to at least two negative contingencies as follows: a) is unemployed; b) *doesn't have housing as owner or other tenure title*; c) *is living in inadequate housing conditions*; d) has in care one or more children, or belongs to a family with many children in care; e) is elderly, without support of legal descendants; e) is handicapped or with invalidity; g) is taking care a person with severe handicap or invalidity degree I or II; h) is an ex-offender.

Art 50. –Inadequate housing conditions is understood to be shanties or other constructions that were not destined to be housing which has not met the minimal requirements embedded in the Housing Law (annex 1, para. a), as well as other improper conditions set up by the local council.

In Romania "adequacy" is defined as covering essential requirements as: (a) free individual access to the living space, without interfering with the exclusive ownership or utilization of the space possessed by another person or family; (b) living space; (c) food preparation space; (d) a toilet and bathroom unit; (e) access to electric power, drinking water, sewage disposal and household rubbish disposal (Housing Law 114/ 1996).

¹⁰ Income assured by MIG Law is, for a single person, about 25 Euro/month; this is a means tested benefit, which generally leads into disapproval and negative social labeling.

¹¹ Law 116/2002: "Art. 25. The Local Councils have the obligation to guarantee the access of marginalised persons/ families to public services of strict necessity, such as drinkable water, electricity, gas system, central heating". But the people from rural and small towns can not profit from these rights because of the non-existence of some of this equipment.

¹² In Romania the official unemployment rate was in April 2003 about 7.8%, but this is not a positive fact because it means that the economy, particularly industry, is not restructured further producing economic loss. On the other hand the number of employed people decreased between 1990-2001 with 44.8% (from 8.156 million to 4.502 million), the trend descending all the time. The dependency ratios (2002): employed/ retired - 1:1.4; active/ non-active - 1:4.8 (but in fact this proportion is smaller because of underground economy).

¹³ Regarding this aspect, within the Strategic Objective 4 – *Promotion of social cohesion and social development*, are formulated another four sub-objectives directly related to housing conditions: 4.6. Residualisation of housing stock deficit, rehabilitation of housing in state of disrepair and improvement of housing conditions; 4.7. Access to electricity for the disadvantaged and providing electricity to isolated rural villages. 4.8. Access to drinkable water and running water; 4.9. Increasing the access to public utilities for the disadvantaged. The deadline for meeting these objectives is December 2004, but it will be almost impossible to meet or realize even 20% of these goals.

¹⁴ In 1992, the government adopted the Directive Principles of National Housing Strategy, which set up the general goals for development of market mechanisms and for assuring social protection of disadvantaged families. This principles stress:

- (1) maintenance and rehabilitation of housing stock;
- (2) development of a legal and institutional framework for housing finance;
- (3) improving the housing management;
- (4) development of a private rental sector;
- (5) building new homes;
- (6) finishing the dwellings started before 1990;
- (7) development of infrastructure related to housing.

¹⁵ Unfortunately these principles/ actions were postponed by all governments, or transposed in practice by ineffective measures.

¹⁶ But very frequently only about 25% of this fund is allocated to housing, the other three quarters being spent on roads and infrastructure.

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Notes