



FEANTSA

Downgrading tenant protection declared illegal by the Council of Europe

The wider scope of the Council of Europe decision
Collective Complaint No. 53/2008 - FEANTSA v. Slovenia

The European Federation of National Organisations Working with the Homeless (FEANTSA) brought proceedings against Slovenia for diluting the rights of tenants whose homes were returned to their former owners after 1991. Deregulated rents have soared while the grounds for eviction have increased; in short, protection of tenants' rights has gradually been eroded by changes in legislation and new developments in case law. Several million people in the former people's democracies that have now become part of the European Union could be at risk of being made homeless. The decision will have repercussions not only in those countries, but right across the EU.

The Committee of Social Rights agreed with FEANTSA that rolling back tenants' rights in this way violated the revised Social Charter.

The first key point is that reducing occupancy rights has been held to violate the right to housing (Article 31.1 and 31.3: promoting access to adequate housing and making the price of housing accessible to those without adequate resources).

Downgrading tenants' rights is not a policy option, therefore, but a violation of international law.

The decision will affect all social rights protected by the revised Social Charter, such as the right to health, education, working conditions, social protection, and so on. The important point is that the State has not just public policy but also civil law obligations, which it cannot chop and change at will. Freedom of contract, which is central to recent developments in European countries, can only be exercised within a framework that holds the excesses of relations of power and subordination (in this case, landlord/tenant relations) within bounds, and this framework is not to be loosened at the expense of the most vulnerable. And because international law prevails over domestic law, each country's parliament and constitutional court will have to accommodate this decision when drawing up and checking the compliance of future legislation.

The second key point is that the above-mentioned development has been recognised as discriminatory (article E). Tenants living in homes built during the socialist era have obviously not had to suffer the effects of restitution, but have actually been able to buy their homes for next to nothing. The Council of Europe found that while housing situations may differ, tenants' social conditions were similar, and differential treatment therefore constitutes discrimination, particularly where any distinction that might justify such differential treatment is *"in no way imputable to them"*.

In other words, the reflex being seen across Europe to make deep cuts in accrued social gains (pension reforms hitting first private-sector employees, then public employees, etc.) is *prima facie* unlawful. Again, this important development will have to be incorporated in national regulations.

The third lesson is that cutting down tenants' rights is in itself a violation. Bearing down on the poorest households is enough to violate their rights, let alone its social consequences. The Council of Europe declares that *"insufficient measures for the acquisition or access to a substitute flat, the evolution of the rules on occupancy and the increase in rents (...) are likely to place a significant number of households in a very precarious position, and to prevent them from effectively exercising their right to housing"*.



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Even if on average households may benefit from national developments, the fate of the most vulnerable is what decides whether laws and policies are compliant with international law: *"in order to establish that measures are being taken to make the price of housing accessible to those without adequate resources, States Parties to the Charter must show not the average affordability ratio required of all those applying for housing, but rather that the affordability ratio of the poorest applicants for housing is compatible with their level of income"*.

It will naturally take time for these decisions to filter down to local courts, and even longer before they inform policy. But having a legal resource that challenges the legality of policies that undercut the protection of the most vulnerable EU citizens can be nothing but good.

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February 2010
