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Asylum Seekers in Europe: Perspectives from the Homeless Sector



FEANTSA



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Asylum Seekers in Europe: Perspectives from the Homeless Sector

By **Mauro Striano**, *Policy Officer, FEANTSA*

The humanitarian crisis related to the significant influx of people looking for asylum has generated a heated debate in the European Union that attracted a lot of attention in the media and engaged not only policy makers but also the public opinion. In several cities citizens volunteered to provide the support that thousands of destitute newcomers urgently needed and should have normally been provided with by public authorities. A situation that undeniably presents important challenges to tackle has become an emergency because of lack of coordination between Member States, inadequate asylum policies and structural problems with regards to the provision of services and to access to housing.

It is not the first time that the European Union has had to respond to a significant inflow of asylum seekers. Having peaked in 1992 with 672,000 applications in the EU-15, and again in 2001 with 424,000 applications in the EU-27, the number of asylum applications within the EU-27 fell in successive years to just below 200,000 and then, since 2006, has constantly increased rising to 431,000 in 2013 and 626,000 in 2014. Although it is undeniable that 2015 has witnessed an unprecedented number of asylum applicants – 1.1 million asylum seekers were registered only in Germany – the European asylum system suffers from serious structural problems that have been hindering an adequate support and provision of services for years.

A number of standards for the reception of asylum applicants are provided in EU law. Besides ensuring proper information, family unit, education of minors, access to the labour market no later than 9 months from the start of the application procedure and access to health care, a set of material reception conditions should be implemented in order to prevent asylum seekers from living in inadequate housing and sleeping rough. Indeed, not only accommodation must be available but it has also to ensure an adequate standard of living which should be provided in specific premises, accommodation centres, private houses, in flats or in hotels

Obviously, in order to guarantee an effective support and to facilitate the integration process of asylum applicants, specific premises are the best option. The problem, however, is that in several EU countries there are not enough places in specific premises for asylum seekers. As a consequence, public authorities often rely on homeless services, which unfortunately are not adapted to asylum seekers' specific needs and do not have the capacity to satisfy all the demand either. The lack of places in specific premises and in general homeless services leads many asylum seekers to be accommodated in hotels where they do not receive adequate support or, even worse, to live in camps and on the streets. In 2014, in France, 23,000 asylum seekers sleeping rough were counted.

Obtaining the status of refugee does not necessarily mean applicants no longer risk being on the streets: besides the structural lack of adequate housing, refugees generally have to leave within a short time the accommodation provided during the asylum procedure and because of a lack of sufficient resources to pay a rental guarantee and discrimination in the private rental market, they are vulnerable to homelessness. Those whose asylum application are refused and end up residing irregularly are in an even worse situation and low threshold services are often their only recourse, if national legislation allows it. Homeless services therefore are one of the main providers, not only during the asylum procedure but also at the end of it.

The supply of accommodation and support, which cannot meet the huge and increasing demand, regardless of the administrative status of the homeless people concerned, inevitably puts the pressure on the service providers. Moreover, it has the vicious effect of creating tension and competition between different groups of homeless people and leads to xenophobic feelings easily used by some political parties to propose dangerous policy agendas and to provoke even more tension. These challenges do not seem to be taken into account by the European



Commission that in its migration packages does not foresee any measure to help Member States strengthen the capability of reception services.

The reality is that, even without the current humanitarian crisis, the structural problems in Member States' housing markets generate housing exclusion amongst people facing poverty and social exclusion. 40% of poor people in the EU experience housing cost overburden, meaning that they spend more than 40% of their income on housing. Depending on the country, poor people are 4 to 20 times more likely to experience this than others. The humanitarian reception crisis further adds to the urgency of addressing this. In the medium-term, pressure on housing markets is set to increase. Structural challenges vary between Member States but include a lack of affordable supply – particularly in growing urban centres and a stock of inadequate quality and regulatory contexts that fail to ensure adequate security of tenure to vulnerable people. Solving these problems would have a significant positive impact, not only on newcomers but also on those who have already been facing homelessness

and housing exclusion in the EU. Failure to properly plan for and address these emerging housing needs will compound existing problems. Moreover, by addressing structural housing problems, the EU could develop a long-term strategy that would help avoiding other humanitarian crises in the future.

Member States need to invest in reception services in the short term and in housing in the longer term but national actions need to be coordinated and facilitated at EU level if we really want to achieve a common asylum system and properly implement EU legislation. Therefore, most importantly, the EU needs to acknowledge the important role played by the homeless sector in providing accommodation and other basic services to asylum applicants, to refugees as well as to those whose asylum application is refused. To develop adequate migration and asylum policies, access to housing needs to be the priority: once newcomers have a place in which they can live with dignity, access to services and to the labour market and in the end effective integration into society can become a reality.

“the EU needs to acknowledge the important role played by the homeless sector in providing accommodation and other basic services to asylum applicants and to refugees.”

LETTERS TO THE EDITOR

We would like to give you the chance to comment on any of the articles which have appeared in this issue. If you would like to share your ideas, thoughts and feedback, please send an email to the editor, emma.nolan@feantsa.org



Asylum Reform in France and its Impact on Homelessness Services

By **Samuel Le Floch**, *FNARS*

“only 36% of asylum-seekers are currently housed in specialist accommodation...the rest are accommodated in hotels, live in unhealthy conditions in camps or are forced to live on the streets.”

An asylum-seeker is someone who flees his or her country of origin because his/her life and safety, or that of his/her children, are in danger, or is someone who has already been a victim of persecution. Guaranteed by the Constitution and France's international commitments, the right of asylum cannot be conflated with a short-term policy of managing migration flows. All asylum-seekers, from the moment they make their claim, must have access to the same reception and support services and must be regarded as potential refugees.

In the face of the tragic situation experienced by migrants asking for protection on European soil, the European Union Member States have a responsibility to take in people seeking asylum in a way that preserves their dignity and to assess their request for protection in strict accordance with the rule of law, as well as facilitate the integration of those who have been recognised as refugees. The international treaties and European directives on the right of asylum lay down regulations that are applicable to all asylum-seekers, regardless of procedure. Vulnerable people benefit from specific protections that states are duty-bound to uphold.

A DUAL OBJECTIVE: SHORTENING PROCESSING TIMES AND PROVIDING ACCOMMODATION FOR ALL ASYLUM-SEEKERS

Consistent with these European Union obligations, the main aim of this reform is to speed up entry into the asylum system, processing of asylum claims and decisions on asylum claims while still guaranteeing reception for all asylum-seekers in specialist structures that must offer systematic support adapted to the asylum process.

Issuing an asylum decision can currently take 18 months and even several years depending on the number of claims being assessed at the time. The objective that the state has set itself is to receive asylum applications within three days and to make a decision on each claim within an average of 9 months

THE REALITY IN FRANCE AND THE CONSEQUENCES FOR ACCOMMODATION FOR ASYLUM-SEEKERS

In spite of these laudable objectives, spaces in specialist asylum-seeker accommodation are nevertheless too few. Only 36% of asylum-seekers are currently housed in specialist accommodation in France.

The rest are accommodated in hotels and receive no support, live in unhealthy conditions in camps or are forced to live on the streets because there aren't enough spaces. This situation is unacceptable in a country like France.

Despite the commendable objectives planned in the reform, the necessary financial and staff resources to provide initial reception, accommodation and support for these people are not available, which means that the number of homeless people increases. Hence the 22,800 asylum-seekers who were sleeping rough in 2014 because there were not enough spaces in accommodation. The number of accommodation spaces is due to be increased (by 8,600) in 2016 but this will still be far too few to meet the demand, which has been increasing significantly since summer 2015 in France.

France has also committed, as part of the European resettlement programme, to taking in more than 30,000 asylum-seekers by 2017. Increasing accommodation capacity is to be welcomed but will not be sufficient (see below). This means that a large proportion of asylum seekers will then fall back on general emergency assistance for homeless people, but this support is not only ill-adapted to and therefore unable to meet the specific needs of asylum-seekers, it doesn't have the capacity to satisfy all the demand either. The issue of equality for all asylum-seekers is at the heart of the matter, as regards the social care, legal and administrative support that is available to them as well as in terms of how their case is handled.

THE CONSEQUENCES FOR ASYLUM-SEEKER SUPPORT

In light of these observations, the essential issue for NGOs is not only ensuring that all asylum-seekers are given accommodation but also making sure that high quality and fair support is available to them, when faced with a government logic that limits dealing with the asylum issue to managing flows, without truly acknowledging that it is important to give support to these people, who arrive in France bereft and in need of help after a long journey into exile.

With the emphasis being put on budgetary restraint, the quality of support received has become the adjustment variable. More spaces have been made available but funding for social care support has been cut, so it sometimes comes down to just giving information, pointing people in the direction of other



services or simply giving 'help' where needed. This when we know that the quality of support received when applying for asylum has a significant bearing on access to protection. The reform still anticipates unequal treatment of asylum-seekers, with some able to be accommodated in specific structures and others who will depend on homelessness services

SEPARATION OF ASYLUM AND SOCIAL CARE DELIVERY IN POLICY

What is more, the asylum and homelessness sectors in France are being separated more and more - in policy and in how services are run - and each falls under a different governmental department: asylum comes under the Home Affairs Ministry and homelessness comes under the Ministry of Social Affairs. This dichotomy in no way reflects the reality on the ground. People affected by asylum policy are caught between both systems and they move between one and the other.

The issue of refused asylum seekers is of central importance. Out of an average of 64,000 people applying each year in France (2014 figures), around 72% of asylum applications are refused. People who receive a negative decision on their asylum application have a month to leave the specific asylum-seeker accommodation they are in. As a consequence, they turn to emergency homeless accommodation for help, they squat or they even stay in hotels and become invisible to services, with no right to work or housing. Moreover, state services are placing more and more restrictions on refused asylum-seekers' access to emergency shelters. NGOs are gradually being pressurised into making a selection between people wishing to use their services on the basis of their immigration status. The cornerstone of the French system of assistance to people in need - unconditional shelter - is increasingly in jeopardy.

THE REFUGEE CRISIS: FRANCE'S COMMITMENTS

Lastly, as part of the European resettlement programme, France has agreed to take in 30,000 people relocated from the Greek and Italian refugee 'hotspots' by 2017. These people, who are asking for asylum and are of Syrian, Iraqi and Eritrean origin, are subject to a specific procedure and they will be granted refugee status after four months. Once they have obtained refugee status, they will be moved into housing.

This new influx of people leads to questions and a lack of understanding. This gives rise to a risk of 'competition between users': new arrivals from the resettlement programme - a result of quotas decided at European level between Member States - asylum-seekers who are awaiting a decision on their application and have often been waiting for more than a year, refugees who will quickly receive housing and then homeless people who cannot easily access accommodation services and housing.

In today's reality, an asylum-seeker is seen as a potential failed asylum-seeker first rather than as a potential refugee. The arrival of these 30,000 people who will receive de facto protection from France must be the catalyst for changing this paradigm and providing social care support for all asylum-seekers that focuses first and foremost on their integration. France must adopt a much more voluntaristic policy that will allow it to take in and support migrants asking for our protection in a way that preserves their dignity. This national level investment is a necessary precondition for respecting the fundamental rights of migrants and France's international commitments.

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<http://www.fnars.org>

“the asylum and homelessness sectors in France are being separated more and more – in policy and in how services are run.”



Italian Help Centres: At the Forefront of Creating New Models of Intervention and Cooperation

By **Gianni Petiti**, *ONDS - National Observatory on Solidarity in Railway Stations*

In the last decade, since a data collection system has been set up for the Help Centres for homeless people in Italian railway stations, it has become evident that the majority of users are non-Italian citizens.

For those who are not familiar with Help Centres, they are places where homeless and deprived people can go to be assisted and guided to social services available in the city. They are not shelters, nor drop-in centres: in fact, they were conceived to provide assistance and guidance to find effective answers outside the stations. The 16 Help Centres now open are based on the cooperation between Ferrovie dello Stato Italiane, providing the space in the station area for free (over 11,000 square meters altogether), a third sector organisation, providing the service, and local authorities, providing financial, or institutional support. The Help Centres form a network called ONDS (National Observatory on Solidarity in railway stations), supported by Ferrovie dello Stato Italiane, the National Association of Italian Cities and the Social Cooperative Europe Consulting Onlus, in charge of the operations. Europe Consulting Onlus manages the data collection system and developed the 2012 Sodalitas Social Award Winner IT Platform Anthology, used to register all the social intervention and therefore to measure statistically, analyse and study the issues related to poverty, which have an impact on railway stations..

Recent front-page news witnessed once again how stations are vulnerable to major social phenomena, such as immigration, when temporary suspensions of the Schengen Treaty block thousands of immigrants on their way to Northern EU Countries in Italian railway areas.

Besides registered users, a large number of refugees found assistance in railway stations, namely from East Africa and Syria. Debarked in Sicily or in the ports of the other Southern regions, especially Bari and Reggio Calabria, these new users cross the entire country, stopping in this or that city, depending on their itinerary and on what each place can offer them on their way to Northern Europe.

In Milan, for example, 87.000 people, Syrians and Eritreans for the most part, have found shelter in the Centrale station since 2013. In this very case, Ferrovie dello Stato Italiane has set up, with the Help Center and the City of Milan, a special plan to ease the assistance to those who could not be sheltered elsewhere, granting access to the station facilities, identifying and securing specific waiting areas, with the support of NGOs. In addition to that, the railway company refurbished a space of 1.500 square meters and offered it to the Municipality, with the aim of granting a better shelter which is not in the station.

A similar action was held last June in Rome, at the Tiburtina station, to shelter Somali and Eritrean refugees, prevented from moving north for the closing of Austrian borders. An emergency camp was set up in a parking area by the station, in accordance with the City of Rome and the Red Cross, and an entire building has been put at the Municipality's disposal for sheltering migrants.

Such dedicated actions are necessary to face immigration waves, as the tools that the Help Centres have been building for years to support homeless people out of poverty, and which represent our model of social intervention in the stations, can hardly respond to their needs. Migrants are just incidentally homeless, for they are in transit towards a better future, with such a strong hope to succeed, that we hardly find in our typical users. Our classic approach, based on building a relationship with the user, seems to be unfit for this transient population, due to the simple fact that in less than a week they will be gone. Migrants come to us with basic needs: to eat, to take a shower, to sleep, although sleeping in a shelter can raise in them the fear to be identified, which would mark, following Dublin, the end of their trip to other countries than Italy. Therefore it is very difficult, if not impossible, to ask, to know, to understand who these people are, what is their age or origin, to build up together an exit strategy from their present condition. Most of the times they prefer not to tell too much about themselves.

“In Milan, 87.000 people, Syrians and Eritreans for the most part, have found shelter in the Centrale station since 2013.”



Moreover, for the sake of our Observatory, it is quite impossible to register this information in Anthology for more accurate statistics, because Help Centre operators have little or no time for back-office work, busy as they are responding to tens or hundreds of people knocking at their door.

Help Centres are thus in the process of enlarging their range of services and activities. The railway company and the local authorities, from their side, are strengthening their cooperation to find new areas for sheltering, but also to assure that stations and trains continue their regular activity without major inconvenience for citizens and passengers, in the full respect of everybody's rights.

This leads us to a critical element we gather from the Help Centres: the growing tension between users themselves, and users and citizens. In spite of numerous acts of solidarity, for example food and clothes donations, we must report an increasing intolerance towards homeless, namely migrants. Citizens are still confronted with the aftermath of the economic and political crisis, and masses of people in distress question everyone on possible solutions and on the need for an extra effort in solidarity. Their patience is at stake, and some just can't but blame the victims for the guilt. Let alone the recent terrorist attacks, constantly linked to immigration in medias, and unfortunately in the political debate at EU level.

In addition to that, we observe friction among the "typical" homeless and these new social services

beneficiaries; the former feeling somehow deprived of their Help Centre, their operators, their resources. Many consider the emergency measures for migrants illegitimate privileges, subtracting money to long time homeless people. Mass media report daily of Italian homeless people sleeping on benches, while refugees are comfortably hosted in hotels, at citizens' expense.

"Neither type of tension must be undervalued," says Alessandro Radicchi, ONDS director. "They can worsen and destabilise the services. Moreover, they risk undermining the citizens' support to social interventions, an expression of the responsibility that Public Administrations have on the political level, but that belongs to the society as an ethical duty".

Needless to say that many other EU countries are confronted with the same issues. Within "Gare Européenne et Solidarité" (www.garesolidaire.net), the network of national railway companies involved in social interventions in the stations, immigration is now a primary topic. "Immigration impact on our stations and trains is dramatic, says the co-president Fabrizio Torella (Ferrovie dello Stato Italiane), especially in transboundary areas. We are trying to set up a common strategy to be prepared to face the consequences of a phenomenon which is clearly far from lessening in the years to come".

Gianni Petiti
ONDS
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Structural Problems of Housing Refugees in Hungary

By **Attila Szabó**, lawyer at the *Menedek Association, Hungary*

Up until the completion of the fence on our southern borders, Hungary was a transit country in the refugee crisis which is currently ongoing in Europe. Anyone who has read a newspaper knows that it was a terrible humanitarian crisis. Thousands of people were forced to sleep outside during this time. Hungary has solved the problem by a physical barrier - by the fence on the border. As our prime minister - Viktor Orbán - cynically noted: Hungary now is only an observer due to the fence. This story could be expanded upon but a lot of photos and blog articles have already recorded it for the future.

I would like to tell another story. Beyond this crisis, Hungary has also been struggling with a structural issue concerning the accommodation of recognized refugees and beneficiaries of subsidiary protection. It is worth sketching out the main reasons the risk of homelessness is so high in this target group.

Once a refugee has been recognised as such, the Office of Immigration and Nationality (OIN) signs an integration contract with those who qualify for protection in Hungary. Refugees then need to undertake certain tasks in order to integrate into the host society, in exchange for which, the OIN provides integration support. Refugees have to keep regular contact with the general social service (Family Support Service, FSS) and social workers support them with counselling. Financial help is given; however it decreases by 25% every six months and comes to an end after two years. During these two years, the FSS tries to help the refugee to find employment.

It seems very good: There is enough money at least in the first six months and there is a counselling service for finding accommodation. The reality, however, is not so friendly. Refugees can live in the same reception centres after their recognition than they did before but only for two months. They usually do not have access to the integration support during this period because of the slow bureaucratic process behind the integration contract, meaning they have to move out of the protected shelters without any financial support. Refugees usually are in need; they do not have enough resources to pay the cost of moving.

If they do not move out they will lose integration support by default. They must leave with nothing. The social worker from the responsible FSS can help them only after moving out. Thus refugees have no trust neither contact with the FSS in that moment.

A complicating circumstance is that reception centres are not in Budapest while most of the recognized people would like to reside there since it is the only city in Hungary where they have a chance to live without attracting a lot of attention. For a refugee living in Hungary therefore, they are usually living a one-hour journey away from Budapest, with no money, no effective personalised help, no knowledge about the country and they are expected to find accommodation on the private market. It does not help that rental prices have risen by approximately 50% in the last 18 months due to different reasons. The flat-market is a very unpredictable factor, it is not easy to adapt to its fluctuation. A fixed amount of support cannot always work effectively.

The OIN can transfer a special timing of integration support in the first month which means an increase in financial help. It can be useful if it arrives on time; however, the OIN has not recently utilized the legal maximum and has transferred only a slightly raised amount of money in the first month. Of course, this raise will be deducted from the benefits of the subsequent months.

The naked reality is that there is a fairly good legal environment but it does not take personal demands into account. Help does not come in time, counsel is physically not available in the most important moments and financial benefit cannot cover the usually required deposit cost of a privately rented property. So far it can be familiar for social experts who work with underprivileged groups but there is one more special factor.

The government has started a campaign against refugees. As a result of this offensive - and the existing attitude of Hungarian society - landlords are afraid to rent their properties to foreigners - especially to those who are from the Middle-East, Asia or Africa.

“The government has started a campaign against refugees.”



Unfortunately diasporas are not strong enough in Budapest except for a few ethnic groups (e.g. Syrians and Afghans, though in their cases the existing inner political or religious conflicts impair the situation). A strong diaspora could help in the beginning; the lack of it strengthens uncertainty.

We should note that there are also a couple of progressive initiatives in Hungary regarding the support of refugees and beneficiaries of subsidiary protection for obtaining accommodation. Due to EU funds, NGOs could build up temporary shelters where families can find accommodation during their housing crisis. However adult men can find places in the general homeless caring system which entails conflicts between them and the homeless from the majority society as a consequence of the scarcity of resources.

Another progressive measure is that the NGOs concerned and FSSs try to organize accommodation-searching events in order to provide help for refugees

before they move out from the reception centres. These events are not systematic, however.

There is a good chance that the law guaranteed system will lead to homelessness. In the case of families, a special temporary shelter can help but in other cases adult men will tend to be served by general homeless centres.

The Hungarian refugee integration system has copied the Polish one. A study from 2010 reports the risks and results of the Polish system: "The greatest risk of homelessness appears when the integration programme ends: Well, what happens when the integration support is over? *Well, that's when the real tragedy begins! (...) the rule is – more or less – that such persons are directed to social assistance centres*" The Hungarian system has to face this risk as well, although in Hungary the situation is almost as risky even under the period of the integration support.



Collective Compliance? Going Dutch on Implementing the Conclusions of the European Committee on Social Rights

By **Joris Sprakel** – *Attorney at Fischer Advocaten in Haarlem and senior lecturer in Human Rights Law at The Hague University of Applied Sciences.*

INTRODUCTION

On November 10, 2014, the European Committee on Social Rights (the Committee) published the decisions on the merits in two collective complaints against The Netherlands. The FEANTSA complaint¹ addressed, amongst others, the issue of conditional access to shelter. The CEC complaint² addressed the single issue of exclusion of undocumented migrants from shelter and other basic social and economic rights (food, water and clothing). In both complaints, the Committee found that the Netherlands was in violation of the European Social Charter. In this article, I will provide a brief overview of the current state of affairs in relation to the implementation of these complaints.

HUMAN RIGHTS IN THE NETHERLANDS

The Netherlands has an interesting relationship with human rights. It is generally believed that internationally, the Netherlands is at the forefront of human rights protection. The author has two reservations about this widespread belief. The first reservation arises when analyzing how the Netherlands approaches the international human rights community. More often than not, the Netherlands will not accept an outsiders' perspective over its own. This includes even the views of the so-called treaty monitoring bodies.³ The only case in which the government will accept such a perspective is when it is laid down in a binding decision.

The second reservation stems from the way the Constitution allows courts to apply international law. As Dutch courts are not allowed to decide on the constitutionality of acts of parliament,⁴ the only way to test these acts against human rights is to compare them to international human rights norms. The problem with this approach is that the direct application of international law by Dutch courts can only happen if the international norm is clear and unequivocal.⁵ Social and economic rights are usually seen as unclear and unequivocal. As a result, the Netherlands government is left with a wide margin of appreciation where it concerns social and economic rights such as the right to housing and shelter.

BACKGROUND TO THE COMPLAINTS

Even though the complaints of FEANTSA and CEC differ in scope, they are materially the same as they both concern the conditionality of shelter. The FEANTSA complaint concerned "regular" shelter cases in which shelter was made conditional upon cumulative conditions such as age, nationality, socio-economic and psychological conditions, and regional connection. The CEC complaint concerned undocumented migrants who were excluded from any government service, including shelter, by law. In practice both type of clients, whether regular or undocumented, were left without shelter even though the need for shelter could be proven. The European Social Charter takes need as criterion.

In both procedures, the Netherlands government took the position that undocumented migrants should not be awarded protection because the Annex to the European Social Charter explicitly restricts protection to residents and regular migrants only. Rightfully so, the Committee decided that that question needed to be dealt with in the Merits stage of the complaint. This meant the complaints were both deemed admissible on July 1, 2013.

The urgency of the situation led FEANTSA and CEC to request an immediate measure, which was granted by the Committee on October 25, 2013. In these immediate measures, the Committee requested the Netherlands not to take actions that would have irreversible consequences. The government immediately announced that these immediate measures were not binding, and did not require any action from the government. The courts also decided not to grant protection on the basis of the immediate measures. It took another year until the Decision on the Merits were published in both cases.

CURRENT SITUATION – FEANTSA COMPLAINT

The law under scrutiny in the FEANTSA complaint, the Social Support Act 2007, has undergone a major overhaul. The purpose of this overhaul was to have a higher participation of people. In other words, less dependency on the government, and cutting

1 Complaint No. 86/2012 – European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands.
2 Complaint No. 90/2012 – Conference of European Churches (CEC) v. the Netherlands.
3 The treaty monitoring body of the European Social Charter is the European Committee on Social Rights
4 Article 120 Dutch Constitution
5 Article 94 of the Dutch Constitution speaks of "norms binding to all".



the budget through decentralization. At the same time the new law, the Social Support Act 2015, has introduced a system of needs based assessment. In cases of need, the government can no longer sit back and wait for the problem to solve itself. Instead, the government needs to offer immediate protection within two weeks, and explore a permanent solution within six weeks.

In practice, the new setup delivers mixed results. Courts, in general, will not allow the responsible municipality to deny a person shelter without a proper investigation. The investigation may lead to an offer or a denial of shelter if there is a viable alternative (family, friends, etcetera). Municipalities have been forced by courts to offer immediate shelter. There are also courts, however, that allow a mother with a 3-year-old child to remain homeless because “according to Google” finding a home should not be difficult. This is despite the fact that the municipality in that case had offered shelter to the woman before based on a need assessment. This means the Social Support Act 2015 gives courts the tools they need in order to force municipalities to properly investigate and come up with real solutions. It is very much dependent on the judges whether this happens or not. Aside from this, there are still a lot of municipalities which include in their local ordinances the criteria that were deemed in violation of the European Social Charter.

The FEANTSA complaint dealt with more than “just” access to shelter. The underlying problems with youth shelter and housing and women’s shelter and housing have not been dealt with. There are still too few places available, and there is no court that will hold a municipality responsible for that. The housing stock for social rent has been reduced over the last decades based on European Union rulings.

CURRENT SITUATION – CEC COMPLAINT

Where the experiences following the FEANTSA complaint are mixed, in comparison the situation on the CEC complaint is more dramatic. Both complaints upon their publication were immediately proclaimed by the central government to be non-binding. The central government has requested advice on the matter from the Council of State (Raad van State) that confirmed their conclusion (i.e. the non-binding nature of the decisions of the Committee).

Local governments have taken a different approach. Municipalities faced with public order issues resulting from people living on the streets naturally want to act. In essence, it does not matter for the municipality whether the person is lawfully residing in the Netherlands or not. This has resulted in the municipalities taking action from the moment the immediate measures were published. In some cases, the municipal government has created shelter facilities for undocumented migrants. In other municipalities, the municipal council adopted legislation that allows for such shelter. Legal disputes have primarily centred on the question of whether the shelter offered was based on legal entitlement, or whether it could be provided “voluntarily” in the sense that no legal entitlement could be claimed, and that access to the courts would be restricted. This claim was accepted by the Amsterdam courts, at least until the introduction of the new Social Support Act 2015.

The central government was not satisfied with this outcome, however. They claimed that in all cases where migrants are concerned, the only authority lies with the Ministry of Security and Justice, the Ministry responsible for migration issues. One of the problems with that position is that in order to be provided shelter, the migrant needs to declare “willingly and believably” the will to return home. For a variety of reasons, this is not always possible, i.e. due to fear, lack of medical treatment, statelessness etc. In a recent coordinated effort, the high courts in the Netherlands have determined that in cases involving undocumented migrants, cooperation with deportation can be requested. The high court in migration issues decided that shelter is available under the condition of cooperation with deportation⁶. This has led the high court in Social Support cases to conclude that failed asylum seekers would have access to shelter via the migration services⁷.

CONCLUSION

The conclusion of this all is that there is still a world to be won. The first signs were hopeful in the sense that courts tried to give meaning to the decisions by the Committee; not by directly applying the decisions, but by interpreting other human rights in light of the Committee’s decisions. With the latest decisions however, that has become an impossibility. The only way forward is now through the European Court of Human Rights.

⁶ Council of State (Afdeling Rechtspraak Raad van State), decision of 26 November 2015, ECLI:NL:RVS:2015:3415

⁷ Central Council of Appeal (Centrale Raad van Beroep), decisions of 26 November 2015, ECLI:NL:CRVB:2015:3834, ECLI:NL:CRVB:2015:3803, and ECLI:NL:RVS:2015:3415



UK to Criminalise Landlords who House Undocumented Migrants

By Robert Aldridge, *CEO Homeless Action Scotland*

New legislation on undocumented migrants is currently being debated by the UK Parliament (The Immigration Bill 2015). The new provisions make the penalties for landlords who house undocumented migrants even harsher than current laws and also give them new powers to evict migrants quickly.

The UK Government has stated that it believes that access to housing is a 'pull' factor which encourages illegal migrants to choose to come to the UK rather than other countries. They do not provide persuasive evidence to back up this assertion, but it is the motivation behind the legislation. Stricter rules which restrict both access to work and to various services including housing are regarded by the government as important to reduce illegal migration.

The 2015 legislation builds on a law passed in 2014 which introduced the so-called 'Right to Rent.' The Right to Rent is a legal duty for all private landlords to check whether any prospective tenant is legally entitled to live in the UK. Landlords must check documents and retain evidence of the documents they have checked for a year after the tenant has left the property. They must also do repeated checks on tenants if the tenant only has the right to stay in the UK for a limited period. If they cannot produce evidence that they have checked the documents they can be fined. If they rent accommodation to an illegal migrant they can be fined or even imprisoned for up to 5 years.

The Right to Rent was piloted in one region of England (the West Midlands) and has been subject to two evaluations – an official evaluation by the Home Office and an independent evaluation carried out by a group of NGOs and co-ordinated by the Joint Council for the Welfare of Immigrants (JCWI), which both raised concerns about the impact of the legislation on indirect racial discrimination.

THE HOMELESSNESS SECTOR AND EQUALITIES ORGANISATIONS IN THE UK HAVE RAISED A RANGE OF CONCERNS ABOUT THE RIGHT TO RENT AND THE NEW LEGISLATION.

The most significant is the impact generally on access to housing for ethnic minorities. There have been many reports over the past twenty years in the UK which show that there is widespread race discrimination within the private rented sector. Most private landlords in the UK own only one or two properties. They are not, in the main, large professional companies. As a result, if they are given the choice between a tenant who is 'obviously' British or someone who sounds or looks 'foreign' they will choose the former because they will not run any risk of making a mistake and being fined.

At a recent consultation meeting in Scotland, landlords' representatives admitted that they would 'of course' advise clients to take the 'safe' option though they were not racially prejudiced. In this way

the already existing racial discrimination is likely to become more prevalent and more entrenched in the private rented sector.

Ironically, from the UK Government's perspective, such discrimination is likely to increase discrimination against UK citizens who are black or Asian or from other minority groups far more than it 'discourages' illegal migrants.

The requirement for landlords to check identity documents is also likely to have a disproportionate effect in excluding UK citizens who are homeless (as opposed to citizens from other EU countries). In the UK there is no national ID card and no requirement to have identity documents (such as a passport). In virtually every other EU country there is such a requirement. So, homeless EU citizens from outside the UK are more likely to be able to prove they have a right to rent than UK citizens in the same circumstances.

If you are a UK citizen homeless and from an ethnic minority you face a double hurdle in accessing the private rented sector directly as a result of legislation which is not intended to affect you at all.

New legislation on undocumented migrants is currently being debated by the UK Parliament (The Immigration Bill 2015). The new provisions make the penalties for landlords who house undocumented The new law gives new rights to landlords to evict people who do not have the 'right to rent.' In England, in most cases they simply have to issue a notice to quit which has the same force as a High Court Order. This gives little opportunity for those affected to appeal in cases which are unfair or unusual.

Homelessness accommodation is exempt from the 'right to rent.' So homelessness services are likely to become silted up with people affected by the new law, who have nowhere to move on to.

The new legislation also gives new powers to Immigration Officers to enforce the law. They can enter premises, seize premises and arrest landlords and agents without a warrant.

So far, it is intended to roll out the Right to Rent provisions to the whole of England from April 2016. It is not clear when the rest of the UK will be affected. The eviction provisions so far only relate to England, but there are powers to implement similar provisions in the other parts of the UK by secondary legislation, which will mean that the provisions are not subject to full detailed scrutiny or amendment by parliament

In the view of Homeless Action Scotland, this legislation not only seeks to recruit private landlords as pseudo immigration officers, but it also poses a The UK Government has stated that it believes that access to housing is a 'pull' factor which encourages illegal migrants to choose to come to the UK rather than other countries. They do not provide persuasive evidence to back up this assertion, but it is the

“This legislation poses a significant risk of increasing racial discrimination and discrimination against UK citizens who are at a risk of, or experiencing homelessness.”



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Another intended aim of the legislation is to fine or imprison landlords who exploit illegal migrants. This is a welcome aim. However the legislation only covers circumstances where rent is paid. Many of the worst gangmasters¹ and 21st Century slavemasters provide 'accommodation' free of charge. By making it more difficult for those enslaved and abused by these people to find legitimate alternative accommodation, it simply increases the power of the gangmasters over the people they exploit.

The legislation has missed the opportunity to take positive action to protect women, children and men who are trafficked and kept in virtual prisons, and instead gives the abusers more power.

The legislation forces tenants to give their valuable identity documents and details to landlords, who have to retain copies. Some landlords may be criminal and could misuse such information for identity theft.

The legislation has unintended consequences for couples where there is a relationship breakdown, and where the only reason one partner has the right to stay in the country is because of the status of their partner. Although there are some circumstances where (usually the woman) is protected it is not universal, and most women in that position will be unaware of the details. The introduction of the new legislation will give more power to an abusing partner to persuade an unwilling partner to stay with them 'because they have nowhere else to go. significant threat of increasing racial discrimination and discrimination against UK citizens who are at risk of, or experiencing homelessness. It inadvertently gives greater power to the worst and most criminal landlords.

The legislation is currently being debated in the UK Parliament. We can only hope that some of the worst elements are removed before the proposals finally become law.

1 A person who employs and directs the labour of temporary or migratory labourers.

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For more information see: <http://ec.europa.eu/social/easi>

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The cover image, Holy Cross, was painted by Christopher Orlowski, who was originally from Poland. He was homeless in London but has now been rehoused. Like many previously homeless people, he is still looking for fulltime employment and is still using the services of Holy Cross near King's Cross in London. He has several paintings exhibited with Cafe Art in independent London cafes and he enjoys participating in the annual My London photography contest organised by Cafe Art. <http://www.caerlas.org/connect-community-resources/>

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