



Housing rights: Landmark ruling by the Council of Europe

1 February 2010: the European Committee of Social Rights (ECSR), the Council of Europe body responsible for monitoring the implementation of the European Social Charter, reached the decision that Slovenia is in violation of the Charter with regards to housing rights. In the context of Collective complaint no. 53/2008, the ECSR considered that downgrading tenants' legal protection is not in line with the international obligations deriving from the Social Charter. This decision provides case-law which will be useful in courts on a local, national and international level and is a step towards a more social Europe.

FEANTSA first lodged its [collective complaint](#) in August 2008. The complaint concerns the situation of sitting tenants, who are tenants living in restituted (denationalised) flats in Central and Eastern European countries. In Slovenia, before 1991, all tenants living in publicly-owned dwellings were granted the so-called Housing right, independently of the origin of their flat. After that date, the Housing right was abolished and a number of measures were taken by the government to allow for former tenants of publicly owned dwellings to become owners, including advantageous conditions for purchase and access to substitute flats when appropriate.

However, there was an exception to the rule transforming *de facto* the Housing right into a property right. This was related to dwellings, which had been transferred to public property after the Second World War through nationalisation, confiscation or mass expropriation. These flats were restored to the former owners (or their heirs) *in integrum*. This created an artificial distinction between former holders of the Housing right with differential treatment for sitting tenants. In addition, their rights were further undermined by a series of measures taken by the Slovenian authorities since 1991, which increased their vulnerability to housing exclusion.

In this context, FEANTSA argued that Slovenia has failed in complying with the provisions of the revised European Social Charter (RESC) with regard to this specific group of tenants and that the situation is not compatible with the international commitments it had ratified, in particular Article 31, 16 and E of the revised European Social Charter, which are respectively devoted to the right to housing, to the right of the family to social, legal and economic protection and to non-discrimination.

The ECSR has consistently held that the right to adequate housing means *inter alia* a right to be protected by law. In its decision on Complaint no. 53/2008, which became public today, the ECSR agreed that as concerns the situation of sitting tenants, there has been a violation of articles 31§1, 31§3, and E in conjunction with Art. 31§3 and Art.16 on several grounds. These include:

- the precarious position of sitting tenants due to a combination of: insufficient measures for the acquisition of or access to substitute flats; the evolution of occupancy rules; and increases in rent;
- the failure to assess affordability of housing based on the income of those who lack adequate resources;
- the discriminatory treatment towards sitting tenants compared to other former holders of the Housing right.

FEANTSA considers the ruling of the ECSR to be important in that it addresses and clarifies a number of essential elements concerning State obligations in the promotion and implementation of the right to housing. It will certainly contribute to the building of international standards. FEANTSA hopes that the collective complaint will encourage the Slovenian authorities to take action as to solve the problem of sitting tenants for the benefit of the Slovenian society as a whole.

The Council of Europe Committee of Ministers is expected to take a resolution on the decision in the coming weeks, thus completing the collective complaint's procedure.

For more details, please visit the [Council of Europe web site](#), [FEANTSA's web site](#), or contact:

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Background information

Collective complaint mechanism: in order to improve the effective enforcement of the social rights guaranteed by the European Social Charter (ETS No. 035 and [revised European Social Charter No.163](#)), an [Additional Protocol](#) providing for a mechanism of collective complaints was ratified (ETS No. 158 of 1995). It foresees the participation of non State actors, including international non-governmental organisations, and allows them to challenge State parties' legislation and question government policies against the background of their international obligations under the Charter. This is on the provision that the State has ratified both the Charter article(s) concerned and the collective complaint mechanism (information on ratifications and accepted provisions by country are available on the Council of Europe web site, in the [section devoted to the European Social Charter](#)).

Procedure: the [European Committee of Social Rights](#) (ECSR) supervises the implementation of the Charter by States both through national reports and the collective complaint mechanism. Once a collective complaint is lodged by an organisation entitled to do so, it is examined by the ECSR, which declares it admissible if all formal requirements are met. The Committee then takes a decision on the merits of the complaint, which it forwards in a report to the parties concerned and to the Committee of Ministers. The report is made public within four months of it being forwarded. On the basis of the report, the Committee of Ministers adopts a resolution.

FEANTSA's approach: access to decent housing is a precondition for the exercise of other fundamental rights and for full participation in society. As access to housing is becoming more and more difficult for an increasing number of households, and debates on the enforceable right to housing are taking place across Europe, FEANTSA feels that it is important to complement its advocacy for housing rights by using the collective complaint mechanism, thus playing a more active role in the development of international case-law (and standards) in this context.

FEANTSA vs. Slovenia: articles of the revised European Social Charter concerned

Article 16 of the revised European Social Charter of 1996 is devoted to the right of the family to social, legal and economic protection. It reads:

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

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

Article 31 is devoted to the right to housing and reads: "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."

Article E on non-discrimination of the Revised Charter reads as follows:

"The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."

The ECSR's conclusions: the **full report** is available on the [Council of Europe web site](#) (section devoted to collective complaints), as well as the decision on admissibility and the different documents submitted by both FEANTSA and the Slovenian government in the course of the procedure.

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