

FEANTSA vs. France – collective complaint 39/2006 ECSR Decision - Main elements detailed

European Committee of Social Rights Decision

The Committee has unanimously concluded that there is a violation of all three paragraphs of Article 31. It acknowledges six grounds for violation and this has interesting consequences. Mostly, the Committee has expressed its decision in a way that appears to be transferable to other States party to the Charter.

Although not all arguments FEANTSA presented were taken into account, none of those raised were rejected. This means that they can still be used for future procedures.

The State is being considered as legally responsible for the housing crisis due to the insufficient quality of its public policies, and this constitutes a violation of the individual right to housing. It is not a moral judgement, it is a judicial judgement.

The decision clarifies a crucial point: public policies should be evaluated on how far they reach the objectives for which they are set up. What is relevant is not the effort undertaken, but the result of these efforts.

The Council of Europe considers that the full enjoyment of rights is the best measure for evaluating public policies and defines their quality standards. This decision provides for case-law which is useful in courts on a local, national and international level and is a step towards a more social Europe.

European Committee of Social Rights' Conclusion

"For these reasons, the Committee unanimously concludes

- *that there is a violation of Article 31§1 of the Revised Charter on the grounds of insufficient progress as regards the eradication of substandard housing and lack of proper amenities of a large number of households ;*
- *that there is a violation of Article 31§2 of the Revised Charter on the grounds of unsatisfactory implementation of the legislation on the prevention of evictions and the lack of measures to provide rehousing solutions for evicted families ;*
- *that there is a violation of Article 31§2 of the Revised Charter on the grounds that measures currently in place to reduce the number of homeless are insufficient, both in quantitative and qualitative terms;*
- *that there is a violation of Article 31§3 of the Revised Charter on the grounds of insufficient supply of social housing accessible to low-income groups ;*
- *that there is a violation of Article 31§3 of the Revised Charter on the grounds of the malfunctioning of the social housing allocation system, and the related remedies ;*
- *that there is a violation of Article 31§3, taken in conjunction with Article E on the grounds of deficient implementation of legislation on stopping places for Travellers."*

Some important elements concerning State obligations

What is an obligation of results?

Concerning the scope of Article 31, i.e. the debate relating to the means used, and the obligation of results, the Committee clarifies what is understood as being the quality of public policies in the context of individual rights.

(56) *"This means that, for the situation to be compatible with the treaty, states party must:*

- a) adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;*
- b) maintain meaningful statistics on needs, resources and results;*
- c) undertake regular reviews of the impact of the strategies adopted ;,*
- d) establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage ;*
- e) pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable."*

(57) *"(...) implementation of the Charter requires state parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein."*

(58) *"(...) states party must take steps to achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources."*

(59) *"(...) statistics are only useful if resources made available and results achieved or progress made can be compared with identified needs."*

As concerns France (61) *" (...) the Government fails to supply relevant statistical information or does not compare identified needs with the resources made available and results achieved. Regular checks do not appear to be carried out on the effectiveness of the policies applied."*

About inadequate housing conditions

(78) *"(...) the Committee considers there was an absence for a considerable period of time of a systematic scheme to address the problem of substandard housing, and that recent measures to correct this have not as yet been comprehensively implemented. The Committee therefore considers that the measures taken by the authorities to eradicate substandard housing are still insufficient."*

(79) *"(...) it finds that the adoption and implementation at the regional and local level of regulations aimed at improving the quality of dwellings is not always ensured in practice and varies between the departments."*

(80) *"(...) the Committee notes the inefficacy of means of redress, which most often result in a compensatory payment or reduction in rent. Furthermore, it notes that tenants are reluctant to start proceedings against their landlord because they do not know their rights and are afraid of losing their home if they take the landlord to court."*

(81) *"The Committee therefore holds that insufficient progress as regards the eradication of substandard housing and the lack of proper amenities of a large number of households constitute a violation of Article 31§1 of the Revised Charter"*.

About prevention of evictions and reduction of homelessness

* Evictions:

(90) *"(...) the Committee considers that given the lack of guarantees ensuring stable and accessible rehousing options before eviction takes place amounts to a breach of Article 31§2"*

(91) *"(...) the Committee considers that the situation in respect of financial measures designed to prevent evictions is also not in conformity with Article 31§2 (...). "*

(92) *" The Committee also noted the loose coordination among all actors involved in the prevention procedure (...)"*

(93) *"The Committee therefore holds that the unsatisfactory implementation of the legislation on the prevention of evictions and the lack of measures to provide rehousing solutions for evicted families constitute a violation of Article 31§2 of the Revised Charter. "*

* Emergency accommodation

(105) *"The Committee notes, from information of the Fondation Abbé Pierre, that data on the accommodation/emergency shelters needs of persons are not collected in a harmonised and effective manner at national level. The data coming from the 115 emergency telephone remains sketchy and does not cover all the real needs since much of the demand for accommodation does not go through this channel. Even less do such data reflect the actual availability of place or information on the persons' stay within the scheme or when leaving the system. The Committee therefore considers that the deficiencies in the French system for collecting data on accommodation/sheltering needs, and more generally on the homelessness phenomenon, is a fundamental shortcoming which prevents the authorities from determining the adequacy of the measures taken to reduce homelessness."*

(107) *"Another deficiency of the French system is the shortage of places in emergency shelters. (...) The Committee therefore considers that shortage of places in shelters for the homeless, as well as the insufficiency of arrangements at municipal level for day reception and overnight accommodation capable of suiting different situations, illustrate the underlying failure of State policy in this field, and that the situation does not comply with the conditions required by the Revised Charter."*

(109) *"In this regard, the Committee finds that in general lines the reception facilities for persons in very insecure circumstances could be improved in France. There is too much of a fallback on makeshift or transitional forms of accommodation which are inadequate both in quantitative and qualitative terms, and which offer not definite prospect of access to normal housing. The Committee considers it would be positive if the conversion of homeless shelters into around-the-clock structures became a general practice. It also considers that any offer of accommodation in them should lead in the short or medium term to an independent housing solution."*

(110) *"The Committee therefore holds that the measures currently in place to reduce the number of homeless are insufficient, both in quantitative and in qualitative terms, and constitute a violation of Article 31§2 of the Revised Charter."*

About the construction of social housing aimed at disadvantaged groups

(128) " (...) There would also appear to be no clear policy mechanism in place to ensure that due priority is given to the provision of housing for the most deprived members of the community, and that

the assessment of the needs of the most deprived is built into the programme of providing social housing.."

(130) "The Committee considers that the implementation of this policy [social housing « targeting » a large percentage of the population] does not by itself constitute a sufficient step or a sufficient justification for the ongoing manifest inadequacy of the existing policy mechanisms for ensuring due priority for the provision of social housing for the most socially deprived. The situation therefore constitutes a violation for Article 31§3."

About the allocation system for social housing

(143) "The Committee notes that the Anti-Exclusion Act of 1998 constituted an effort to improve the system of allocating social rental housing. However, there is clear evidence that the system is still not functioning well, which is illustrated by the fact that a large part of the demand for social housing remains unsatisfied (only 5 to 10% of the poorest households obtain social housing), and that average waiting times for allocation are still too long (around 2 years and 4 months)."

(144) "The Committee considers that the allocation procedure does not ensure sufficient fairness and transparency, since social housing is not reserved for the poorest households. The application of the concept of "social mix" in the 1998 Act, which is often used as the basis for refusing social housing, often leads to discretionary results excluding the poor from access to social housing. The major problem stems from the unclear definition of this concept in the law, and in particular, from the lack of any guidelines on how to implement it in practice. Therefore, the Committee considers that the inadequate availability of social housing for the most disadvantaged persons amounts to a breach of the Revised Charter (...)"

(147) "Therefore the Committee holds that the malfunctioning of the social housing allocation system, and the related remedies, constitute a violation of Article 31§3 of the Revised Charter."

Discrimination against migrants and Travellers

(160) "The Committee already noted in Conclusions 2004 that immigrant families had to wait longer than other families to be allocated social housing (...) On the basis of these statistics, the Committee considers it could be presumed that there is a problem of indirect discrimination against migrants in respect of access to social housing."

(161) "(...) Moreover, the Committee considers that the competent authorities rely too frequently on the criteria of "social mix" to refuse allocation of social housing, which can lead to arbitrary decisions given the unclear manner in which this concept is defined in law, and the lack of any guidelines on how to implement it in practice."

(163) "(...) When confronted with Roma or Traveller settlement of undefined legal status, public authorities should make every effort to seek solutions acceptable for all parties, in order to avoid situations in which Roma and Travellers are in danger of being excluded from



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access to services and amenities to which they are entitled as citizens of the state where they live."

(164) "(...) The Committee finds that the delay in implementing the above-mentioned Act [of 5 July 2000] is regrettable, since it compels Travellers to make use of illegal sites and therefore exposes them to the risk of forcible eviction under the 2003 Act on internal security."
