

Collective Complaint no. 53/2008

FEANTSA vs. Slovenia

Background information

Before 1991, in the majority of the former republics of the then Socialist Federal Republic of Yugoslavia public authorities actively provided the necessary resources aimed at solving housing related issues. The basic forms of housing assistance consisted of granting cheap housing loans and guaranteeing allocation of public housing flats for unlimited use, with the option for the tenant to buy them at an advantageous price.

The Republic of Slovenia owned approximately 230.000 flats, which were publicly-owned and administered by public bodies. Independently from their origin (public property, purchase, nationalisation, confiscation or other forms of expropriation by the state), these flats shared the same legal status. Individuals and families occupied publicly owned flats on the basis of the so-called "Housing right", a civil right, which guaranteed permanent and uninterrupted usufruct of the flat. In case of death of the holder, this right was transferred to the family members who lived in the flat. The Housing right holders had to regularly pay a flat rate maintenance costs. The Housing right could be revoked only in 3 cases determined by law: in case of inappropriate behaviour, failure to pay maintenance costs or if the holder possessed an equivalent unoccupied flat. National jurisprudence and the Constitutional Court argued that the status of a Housing right holder was closer to the status of an owner than that of a tenant.

The situation changed after 1991. The Housing Act adopted in 1991 abolished the Housing right, whereas the ownership of former public flats was transferred to the public entities that had administered the property until then. As compensation and a means to solve the housing problem of former holders, the State imposed a system of privatisation whereby the new owners (public entities) had to sell the flats to the previous Housing right holders or, in case of death, to their closest family members within two years. The selling price was set by the law at 5-10 percent of the market value of the flats and the holders of the Housing right could use the option of paying in installments over a period of 20 years. If a flat could not be sold due to a pre-emptive right of a third party or because the building had to be pulled down, the new owner had to ensure that the previous holder of the Housing right could purchase an alternative flat under comparably advantageous conditions.

However, there was an exception to the rule transforming de facto Housing right into a property right, and this was related to flats which had been transferred to public property after Second World War through nationalization, confiscation or mass expropriation. This exception concerned about 13.000 flats, where Housing right holders could not purchase the flats, but could sign a rental lease with the new owner. The legislator justified the distinction between the majority of Housing right holders and those holders, who lived in formerly expropriated flats in good faith, with its intention to restore the flats that had been expropriated in the wake of the Second World War to their former private owners or their legal heirs. It is unclear why, apart from budgetary considerations, unlike other Central and Eastern countries, Slovenia decided to restitute unjustly expropriated flats to their original owners *in integrum*, instead of proposing for instance just material compensation. This and other measures taken by Slovenian national authorities in the following years increasingly affected the housing situation of tenants living in restituted flats, thus increasing their vulnerability to housing exclusion.



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In recent years, many initiatives have been taken in order to try reviewing the existing situation, which continues to cause prejudice to a significant number of tenants, has obvious social consequences and has been acknowledged as being a problem. For instance, a government decision of 1998 foresees the setting up of a commission in this context, which was however never set up; the National Assembly agreed in 2002 that the problem needed to be solved; the Slovenian Ombudsman has been mentioning this urgent problem in his reports since 1995. The Association of Tenants of Slovenia, which is a FEANTSA member, has also actively worked on this, without results. Moreover, it should be mentioned that the Council of Europe Commissioner for Human Rights warned Slovenia several times in his annual reports as well as in his report on Slovenia.

In its collective complaint, FEANTSA argues that the measures taken by the Republic of Slovenia in this context are not compatible with the international commitments it has ratified, in particular Article 31, 16 and E of the revised European Social Charter.

Despite several calls for a solution, the situation has not changed so far. 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 European Committee of Social Rights is expected to take a decision on the admissibility of the complaint in the coming months.

The full text of the complaint no. 53/2008 is available at:

http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC53CaseDoc1_en.pdf

For more information on the revised European Social Charter and the Collective complaint mechanism, please visit FEANTSA's [web section devoted to the right to housing](#) or the [Council of Europe web site](#).

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