The Newsletter of FEANTSA - The European Federation of National Organisations Working with the Homeless

Legislative Change Affecting Housing and Homelessness in Europe

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HOMELESS in Europe

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Editorial

Europe prides itself on being a place where the well-being of citizens is primary and where the welfare state rests at the very heart of our legislative systems. However, in this era of globalisation and liberalisation, it sometimes seems that we are witnessing the decline of the welfare state, as it retreats before the supremacy of market values. Privatisation of many formerly public sectors allows the profit-driven logic of the market full sway, at the expense of those who cannot hope to compete in this arena: the most poor and the most vulnerable. Groups like the homeless cannot access private services or access housing on the private market. Poverty and homelessness become an ever looming threat on the horizon as access to affordable housing becomes ever more tenuous. Sometimes it seems that this is an unstoppable trend and that the situation will be ever bleaker and yet, at the same time, one can also pick out developments from across Europe that point to an enhanced understanding of, and concern for, the situation of the socially vulnerable and excluded. These give hope that a modern economy in a globalizing age is not necessarily incompatible with social concerns and the welfare of all citizens equally.

This edition of the **FEANTSA** newsletter seeks to outline some of the recent legislative developments across Europe that have an impact homelessness and on the accessibility and affordability of housing, whether positive or negative. As we have seen, both in previous editions of this newsletter, and in the work of **FEANTSA** more generally, the lack of accessible and affordable housing can be a central causal factor in relation to homelessness. These legislative changes are of interest to those active in the social sector and combine to form a useful picture overall, but a word of caution nonetheless: it is fundamental to bear in mind that the legislative evolutions that the newsletter focuses on are presented here in isolation, and may not necessarily be representative of the full picture in the country in question. Rather, each article highlights just one aspect, important in itself certainly, but not the only vital aspect of the social strategy or housing policy in place in the country under discussion. While the insightful criticisms and analyses offered here are certainly of relevance to policy-makers, they are not intended to praise or to condemn the overall system in place in each of the individual countries that are mentioned.

Interestingly, many of the new legislative developments brought to our attention by our expert contributors are very positive in relation to the fight against social exclusion. In Hungary for example, the governmental measures described by Peter Bakos of NGO Hajszolt, constitute a positive and substantial step towards combating indebtedness among the general population. This improves the financial situation of families and helps to prevent evictions. The article from Matt Cornish of UK NGO Shelter also outlines a positive legislative step towards rendering housing more secure. The UK government is at present seeking to create a system to ensure that private tenants will not have their deposits unlawfully withheld – crucially allowing tenants retain the money to secure a new tenancy. In Belgium too, positive legislative developments in the area of housing are brought to our attention. Pol Zimmer of the Development Company for the Brussels Capital Region presents the new housing laws that have been passed in the Brussels-Capital region. Although it is still too early to evaluate their full impact, they mark an important step towards public responsibility to ensure the right to housing.
Some of our contributors offer insightful analyses of legislative changes that seem positive on the face of it, but are in fact rather superficial and fail to get to grips with the root of the problem that they are intended to solve. Thus, Josep Castanaye of Spanish NGO Prohabitage lays out his concerns in relation to the promised “drastic housing measures” undertaken by the new socialist Spanish government. While measures to increase accessibility of housing in Spain are undoubtedly necessary, he fears that the proposed legislation will do little more than foster the market mechanism and help certain strategic groups, without alleviating the situation of the most vulnerable. Dr Padraic Kenna of the University of Galway turns his attention to the emergence of the legislative and administrative framework to combat homelessness in Ireland. Although there is much that is praiseworthy in the strategy adopted by the Irish government, Dr Kenna fears that it eschews the fundamental question of an enforceable right to housing.

Finally, there are those contributions that highlight legislative change that cannot fail to have a direct, negative impact on the situation of certain vulnerable social groups. Disturbingly, it seems that the socially excluded are simply ignored, or even directly targeted, in these developments, and as such they seem to point to a shift in values. In France, Marc Uhry highlights how the new internal security legislation criminalizes the lifestyle of the travelling community. What is more, this development seems to be part of an overall trend towards the reduction collective responsibility for the well-being of all citizens, in favour of a shift towards each individual being responsible for his/her own situation. Researcher Volker Busch-Geertsema of Germany draws our attention to the notorious German social welfare reform known as the Hartz Laws. While the government maintains its stance that the reforms are necessary and must go through, Volker Busch-Geertsema offers an objective appraisal of what these reforms will mean when they come into force and the negative impact that they will have on situation of vulnerable groups such as the homeless, those dependent on welfare, the long-term unemployed etc.

As always, **FEANTSA** is very grateful to all of our contributors for giving us the benefit of their expertise and making this European overview possible. The articles combine to offer a picture of legislative trends in Europe that leave us with mixed feelings of hope and disappointment. Yet despite some of the bleaker developments, we cannot ignore the underlying message that change is possible. Many of our contributors state firmly that the NGO sector has had a positive input into legislative change that will have a positive impact on the situation of the homeless and the excluded. We must continue to work towards such change if Europe is to continue to carry a banner for citizenship, for human rights and for social inclusion.

We welcome you comments and reactions to this newsletter. You can send them to: Dearbhal.Murphy@feantsa.org •

The Criminalisation of homeless people in France: How the new law on internal security makes criminals of 300 000 members of the travelling community

By **Marc Uhry,** Alpil. Contact: alpil@globenet.org

A law passed in 1990[1] and updated again in 2000 places an obligation on every French community with more than five thousand inhabitants to construct a halting site for travellers living in caravans. These laws further stipulate that a plan should be put in place at departmental* level to meet housing needs, taking into account both the nature and the scale of demand in the region.

Up to now, less than 20% of the communities affected by this law have actually respected the obligation placed upon them some 14 years ago. Thus, France has 10,000 sites for about 400,000[2] persons, living in at least 100,000 caravans as their principle or sole accommodation. A few of these caravans are parked on private property, but only a tiny fraction of the total. It is reasonable to suppose that at least 80% of the travelling community are therefore homeless, which is to say that they are forced to park their caravans in sites not intended for this purpose[3], given that halting sites are already full beyond capacity and given that this population is not particularly welcome in traditional housing (nor do they generally wish to live in traditional housing). In light of these factors, most of the time, the travelling community halts in empty tracts of land without any permit.

Until recently, this illegal halting was a matter of civil law litigation between the owner of the site in question and the occupants. In order to eject the families, the property owner was obliged to follow a legal procedure, which culminated in an eviction order, with or without notice (depending on the urgency of the situation, the nature of the property in question, etc.). The legal decision was communicated to the Prefect (the local representative of the State and therefore the executive power) who authorised the police to proceed with the eviction. The Prefect also had the power to modify the duration of the notice stipulated in the legal decision, if circumstances seemed to warrant it.

On average, the caravans could stay on a property not intended as halting site for between three weeks and three months. When confronted with the question of illegally occupying these properties, the travelling community could justify its actions by highlighting the lack of alternative sites, or other extenuating circumstances such as health needs or the need to ensure access to education for their children. To sum up: they had the right to a fair trial.

The law on internal security, which was passed on the 18th of March 2003, radically transformed this situation. Article 53 of this law introduced an amendment to the penal code stating that to occupy a site in order to establish a dwelling there, even on a temporary basis, without authorization, is liable to six months imprisonment and 3 750[4] euros fine. What is more, the persons concerned risk a three-month suspension of their driving licence. They may also have vehicles, other than those serving as habitation, confiscated (ie: the cars that are used to draw the caravans).

Quite apart from the technical incoherence of this law that provides for the confiscation of the vehicles used to draw the caravans, while ordering, at the same time, that these same caravans be removed from the site, and that allows the confiscation of the driving licence of the same persons who have been forbidden to halt, the major change is that from now on, illegal halting is a penal offence, rather than simply a matter of civil law.

In concrete terms, what this means is that the police no longer need the decision of a judge and agreement of the departmental prefect in order to proceed to the ejection of the caravans. In French penal law, there is a concept known as "an offence in progress". What this means, is that from the moment of occupying a site illegally, the persons in question will be in a permanent state of committing an offence. At whatever moment the police become aware of the occupation, those occupying the site will be considered to be in a state of infringement and the police have a responsibility to end this infringement. From a legal point of view, the travellers will no longer have the opportunity to defend themselves before the law, as they will no longer have the right to a hearing where they can make their case.

The police no longer need the decision of a judge and the agreement of the departmental prefect in order to proceed to the ejection of the caravans.

Given that it does not provide for supplementary halting sites, this law has obviously not solved the problem of illegal halting; it has simply accelerated the rotation of the travelling community from one site to the next. As far as the local communities and inhabitants are concerned, the problems arising from illegal halting last for a shorter duration, but occur more frequently. Furthermore, the automatic status of penal offence that is applied to illegal halting serves to deprive local authorities of the room for manœuvre they had under the old system and through which they could adopt a stance according to the circumstances. The new legislation reduces their interaction to a solely conflictual relationship, meaning that behaviour is radicalised on both sides. It would seem therefore that the section of the Internal Security law concerning the travelling community is useless, even counter-productive.

What is more, one can consider this law as part of a worrying greater movement tending towards the criminalisation of poverty and the lifting of public and community responsibility. This is a blatant example: a mere 20% of communities respect a law that has been in place for 43 years and their failure to do so condemns 80% of a social group to live without any authorized or even assigned area to settle. Yet it is through a law focused solely on individual responsibilities that public authorities are seeking to solve the problems arising from this situation.

The primary victims of the dwindling of collective responsibility are the poor, for increasingly we embrace the view that they are responsible for their own situation and for the trouble it causes us.

It is clear, however, that progress in the matter of halting sites cannot result from individual initiatives. It will necessitate collective organisation of the sharing of public space through town planning regulations, the creation and management of the necessary structures and facilities, the organisation of water and energy lines, etc.

This same Internal Security law has complicated the conditions surrounding prostitution, making prostitutes, especially those of foreign origin, more vulnerable – in the name of combating the traffic of human of human beings. The law also outlaws gatherings of young people in the entrance halls of apartment blocks. All in all it, it seems based on the premise that social problems arise solely from individual practices.

Nor is this law an isolated development. It is rather a symptom, among many others, of a society-wide development towards the placing of responsibility on individuals rather than on communities and public authorities, through the obliteration of aspects that are related to collective organisation. Other areas where this phenomenon is becoming pronounced are health policy (making patients responsible), road safety (making drivers responsible) and so on. While efforts to raise awareness about this type of issue among the general population are praise-worthy, and although it is probably necessary to re-emphasise the responsibility of the individual, it is not acceptable that this constant referral back to the responsibility of the individual should serve as a public policy stance.

The criminalisation of the travelling community's lifestyle through the creation of this penal offence is not only morally questionable, but it is all the more scandalous when one considers that there is no alternative open to the people involved, which would allow them to change their situation. They are simply condemned to being "delinquents".

When we look beyond the confines of this single example to the general situation, it is true to say that the primary victims of the dwindling of collective responsibility are the poor, perhaps especially the homeless and those living in inadequate housing, who are the visible face of poverty, for increasingly we embrace the view that they are responsible for their own situation and for the trouble it causes us.

The philosopher's stone, whose alchemy has transformed 300 000 homeless into as many criminals, is a swindle. These people have always been homeless and their transformation into criminals, responsible for their own situation, has only served to radicalise social relationships and in doing so, has seen the possibility of a sustainable resolution of the difficulties that the present situation is causing to travellers, local inhabitants and institutions, slip even further away. •

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[1] To consult all French legal instruments, visit the website: www.legifrance.fr

* A department is a French Administrative subdivsion. It is administered by a Prefect.

[2] The notion of « minority » does not have currency in France. For this reason, there is no exact census of the travelling community, which is estimated to be between 300 000 to 500 000 people. The information gihre should therefore be considered indicative. The tendencies that it highlights are eloquent enough to compensate for any statistical imprecision.

[3] Nowadays, almost the whole of the territory of France is covered by town planning regulations: anywhere that caravans are not specifically authorised, they are, in fact, forbidden. This effectively outlaws the traditional nomadic practice of simply stopping by the sides of the roads.

[4] Unless the site is part of the territory of a community that has failed to meet its obligations to provide halting sites for travellers. However, for various reasons, both financial and related to the reorganization of territorial communities, the "land reserves" that belong directly to communities have become residual. The absence of available land is in fact the main argument used by communities to justify the delay in putting solutions in place to meet the needs of the travelling community.

Favourable Measures to Tackle Indebtedness in Hungary

By **Peter Bakos**, *Coordinator of International Relations* for FEANTSA's Hungarian Member Organisation "HAJSZOLT". Contact: peter_bakos@refomix.hu

In the early 90's, years of political and economic transition in Hungary, the widespread process of privatisation made itself felt in public utility companies. As part of this process, the central subsidies that had previously been granted to public utility companies were cut off, despite the fact that these companies needed resources for recovery and improvement. The price of public utility services therefore began to rise and this in turn meant extra expenditure for the population. The following figures confirm the major increase in expenses for consumers:

- Between the period of 1990 and 1996 the prices of energy and public utility services increased by 500%.
- A more recent figure also serves to put this increase in perspective: while shop prices have increased six fold since 1989, the price of energy has increased twelve fold.

On top of the growing cost of public utility services, the interest on the former bank loans has also increased, resulting in a greatly increased cost of living, when compared to life in the year 1989. The process of privatisation was accompanied by an increase in unemployment, which made the situation of many families even more difficult. By 1993, one third of former workplaces (1,5 million workplaces) had been phased out. Only half of them were restored in the last decade.

The combination of these disadvantageous changes (loss of jobs - increased housing expenditures) threatened the structure of many families. They found themselves unable to maintain their former standard of living. Thus, in some very extreme cases, families had to choose between settling their mounting bills and buying food. In this extreme situation, families postponed the payment of public utility bills and considered their postponed payment as a kind of interest-free loan. This solution was a means for families living in poverty to make ends meet, but it naturally led to the accumulation of debts. (According to expert estimates, there are about 500,000 households with arrears that pre-date the last six months.)

The first attempts to remedy the situation were made by some of Hungary's major cities (Budapest, Szombathely, Nyíregyháza). Within the framework of local campaigns, they introduced measures to provide debt management support for local families. The underlying problem, however, required more comprehensive measures at national level. The precursor of these measures was a resolution on preventing families from becoming homeless, which the Parliament adopted in the second half of 2002.

Within the framework of this resolution -

1. The Parliament calls upon the Government to enquire:
   a. What percentage of families is threatened by homelessness?
   b. In what way, and to what extent, can the legislation in force, the local authorities, and the network of NGO-run organisations contribute to preventing families from becoming homeless?
   c. What is the extent of direct or indirect expenditure incurred by the government, the municipalities and other bodies when a family becomes homeless?
   d. How is the law applied in practice? The relevant state and municipal bodies, as well as other organizations with a special focus on the enforcement of children rights in cases where families become homeless, should be consulted.
   e. What is the practice in EU Member States with regard to ownership rights, social rights and the enforcement of regulations ensuring the protection of families and children?
2. The Parliament calls upon the Government to inform the Parliament on the findings of the inquiry.
3. The Government should pass motions to modify the law - or to create new legislation if it is justified – which would:
   f. Ensure access to low rent social housing for families who are not in a position to buy or build a house of their own;
   g. Promote the prevention of homelessness among families;
   h. Guarantee the respect of the social rights of families threatened by homelessness.

Following the adoption of the above-mentioned resolution, a law providing for a debt management service came into force in January 2003, replacing the local initiatives with national legislation. It provides a legal framework and leaves certain elements to be regulated by the local governments. (For instance each local government can decide on which type of debts they want to involve in the debt management service.) The aim is to help families who find themselves in debt due to household expenditure and who are willing and able to partially settle their arrears. This partial capacity to pay is complemented by the support. The aim is to restore and stabilise the ability to meet expenses and to prevent the family from being evicted. In order to understand the complexity of this problem, the interests of each stakeholder should be briefly reviewed.

There are four main stakeholders in this scenario, with four different interests: **The government** and **the local authorities** have to find a balance in their decision making between "punishing" those unable to pay and providing help for the needy. Too much support for the non-payers might result in worsening the payment practices of other consumers. Overly strict punishment of non-payers (successive evictions) would shock public opinion and the provision necessary for the evicted families when they become homeless would cost even more. (Additionally some of the local authorities also (partially) own certain local public utility companies.) **Public utility companies** are interested in reducing payment arrears and increasing their returns. They cannot increase their prices because it may result in still more non-paying consumers, which would increase payment arrears. Hence their interest lies in providing support for those in debt, so that they will, in time, be able to pay back their dues. The final stakeholder is of course any household that finds itself in debt.

Households are interested in maintaining their housing and the basic services essential for a reasonable degree of comfort.

In accordance with the law on debt management, local authorities shall enact legislation at local level, which lays down specific provisions for the debt management service for the area. These include:

- The size and quality of the dwellings which can be included in the programme in the given city;
- The maximum amount of arrears that can be dealt with;
- The amount of debt reduction support that can be provided;
- Eligibility criteria for the debt management service;
- The financial participation of beneficiaries in the service.

The local authorities can decide whether or not to include the following types of debts in their debt management service: public utility payment arrears (for services such as gas, electricity, heat, water, etc.), joint liability arrears in blocks of flats, rent arrears, as well as debt arising from a bank loan taken to purchase housing. With regard to the latter, negotiations are still ongoing with the National Savings Bank on how the service for those in debt to the bank might be extended.

As well as providing financial support, local authorities must also run debt-counselling schemes. This part of the service is usually provided by the local Family Support Services.

The law regulates the type of households eligible for the debt management service. The household in question must meet the following criteria:

- The household must have debts in excess of 50.000 HUF (~200 EUR) and at least one of these outstanding debts should be older than 6 months. The 6-month debt must have originated during the18-month period preceding the submission of the application.
- The household must have a monthly per capita income per capita doesn't exceed the amount laid down in local authority provisions.
- The household must live in a dwelling neither bigger, nor of better quality than the minimum size and quality standard laid down in the local authority provisions.
- The household must undertake payment of the outstanding balance of the debt after the debt reduction support assessed by the local government.
- The household must commit itself to participating in a debt management counselling scheme.

The rate and period of the debt reduction support are laid out as follows:

- The rate of the debt reduction support cannot exceed 75% of the arrears.
- The amount of the debt reduction support cannot exceed a maximum of 200 000 HUF (~800 EUR).
- The support can be provided in a single lump sum, or in the form of monthly payments.
- The maximum period for the debt management support scheme is 18 months. One extension of 6 months is possible, however, should this prove necessary.
- The debt reduction support must be granted by directly discharging the debtors' account with the public utility company, or by direct payment to creditors.
- The debtor doesn't have to repay the debt reduction support

The law also provides that 90% of the debt reduction support granted by local authorities shall be reimbursed from the central Budget.

With a view to strengthening this debt reduction initiative, a housing maintenance support payment was introduced as standard for those meeting the criteria laid down in the law. This support is granted by the local authorities. A person is entitled to housing maintenance support if the household's monthly income per capita does not exceed 150% of the minimum old age pension (often used as a basic unit for calculation of social welfare payments in Hungary), provided that the proven monthly costs of housing maintenance exceed 25% of the household's total monthly income. The law also provides that, in order to eligible, the flat size must fall within the following scale:

a. 35 m2 for one person living alone
b. 45 m2 for two persons living in one household
c. 55 m2 for three persons living in one household
d. 65 m2 for four persons living in one household
e. Beyond 65m2, if more than four persons live in the household, 5.5 m2 should be allowed for each additional person

These measures will certainly bring development, however, it must be added, that in Hungary, only 2-3% of the GDP is spent on housing subsidies, while the same indicator in the EU-15 is 1%. However this is a very "spectacular" measure since it targets the stage just prior to loss of one's home, following which families may fall apart and people become homeless.

The final measure targeting the reduction of indebtedness is a debt consolidation programme. In May 2004 the Government made a decision to launch a programme that seeks to reduce the degree of indebtedness of the population. The programme targets a special segment of housing loans, as well as public utility arrears. A survey conducted prior to the government's decision revealed that almost 100,000 families are affected by judicial proceedings arising from unmet debts. The total amount of housing-related debts amounts to 36 billion HUF . (144 million EUR). There are two main types of arrears: the arrears in the payment of bank loans taken for housing and arrears in the payment of public utility bills.

Year	Amount of debt	Estimated number of families affected	Expenditure
2005	Less than 100.000 HUF	10 000	1 billion HUF
2006	100-200 000 HUF	6 500	1,6 billion HUF
2007	More than 200 000 HUF	4 500	3,2 billion HUF

Those whose housing loans were taken prior to the 31 December 1988 will be able to participate in a debt consolidation programme. This programme will be launched in 2005 for a 3-year period with a budget of about 5,8 billion HUF and will affect more than 20,000 families. The details of the programme are being developed. The programme targets those unable to pay off their loans any longer because of their social situation and because the dwelling they own doesn't cover their debt. Their obligation to pay off the debt in question will be deferred until their social situation has changed in a significant positive way.

As for public utility arrears, further changes are on the horizon, due to the extension of the eligibility criteria for entitlement to the existing debt management service. Furthermore, the government intends to take measures in order to prevent the accumulation of future arrears. To this end, a decision has been made to set up an early warning system. Within this framework, public utility providers will be obliged to inform the body responsible for debt management of consumers having accumulated arrears older than 3 months.

Although the measures tackling indebtedness are very significant, they focus on just one of the factors that may lead to homelessness. Strategies to effectively prevent homelessness need to take into account the full spectrum of causes. Then the appropriate legislation can be created or adapted in order to eradicate these causes. It is to be very much to be hoped that this comprehensive approach will be observed by the new "Government Office of Equal Opportunities," an institution that was created with a view to strengthening social inclusion.

On 1 January 2004 the Government established the Government Office of Equal Opportunities, which meant further development of strategies to combat social exclusion. The Government Office
a. Identifies the main causes of social exclusion, as well as the population affected;
b. Initiates the creation of the legislation necessary for strengthening social inclusion and participates in the development and implementation of the relevant measures;
c. Promotes social solidarity through its activities;
d. Promotes the reduction of exclusion;
e. Develops programmes and measures in order to reduce conflicts coming from various causes like a given social situation, health condition, financial circumstance, etc.;
f. Announces calls for proposals targeting the promotion of equal opportunities.

The Government Office established the National Network of Equal Opportunities throughout Hungary, in the framework of which, the so-called "Houses of Opportunity" were established in each county.
The success and the impact of the Government Office of Equal Opportunities will very much depend on the degree to which its suggestions and opinions are taken into account within the legislative process. It is fundamental that the Government Office of Equal Opportunities should lean on existing NGO structures and draw on their knowledge and expertise in order to be truly vigilant. In this way it can have a "watch-dog" role and make its voice heard when existing or future legislation threatens to affect the most vulnerable in a disadvantageous way. •

Fears of an increase in homelessness and social vulnerability due to the implementation of the "Hartz Reforms" in Germany

Germany

By **Volker Busch-Geertsema**, *National research correspondent for the FEANTSA Research Observatory on Homelessness in Europe*

Introduction:

Over the past two years, there has been intense discussion and media interest in Germany concerning the government's plans to reform the system of social welfare benefit and unemployment benefit. In the meantime, the respective bills, known as the "Hartz laws", have passed through parliament and they became law in December 2004. They will come into force on the first of January 2005. Experts agree that this reform will be the most substantial social reform in Germany since World War II.

The creation of a new form of unemployment benefit for all long-term unemployed:

Basically, the reform merges the two former types of benefit for long-term unemployed people. The first type is unemployment benefit *(Arbeitslosenhilfe)*, which, in the past, ensured a transfer income for long-term unemployed people, dependent on former wages and social security contributions. This will be abolished in favour of a new, more generalised benefit. Under the reform, all people who have been unemployed for more than 12 months, and who are physically able to work for at least three hours a day, are entitled to a new type of subsistence benefit, called "*Arbeitslosengeld II*", as far as they are not able to ensure their subsistence by other means.

The second type of benefit to be merged into this new generalised payment is "social welfare benefit" (*Sozialhilfe*). Until 2004, persons who had never paid social security contributions, or only for a very short duration, were entitled to this "social welfare benefit" which provided a lower minimum benefit than the average unemployment benefit *Arbeitslosenhilfe*. Now these persons will receive the new merged *Arbeitslosengeld II* - as long as they have the physical capacity to work for at least three hours a day. This represents a major change, especially for those formerly in receipt of the unemployment benefit, who will see a reduction in their entitlement.

The new merged benefit payment *Arbeitslosengeld II* will be funded by tax-money from central and local government, but the level of payments and the conditions for eligibility will be very similar to those of for social welfare (which was – and will remain - funded exclusively by municipalities).[1] A small additional allowance (regressive and time limited for a maximum of two years) is planned for those who used to receive unemployment benefit,[2] in order to ease their way down to the minimum benefit.[3] Thus a new system of minimal and strictly means-tested income has been created and it covers all long-term unemployed people (and their household members) in need (up to six million persons in 2.9 million households). The legal basis for these reforms is laid down in the newly-created "part two" of the German Social Code (*Sozialgesetzbuch II,* known as *SGB II*), which comes into force on 1st January 2005.

Substantial reduction of the numbers entitled to social welfare benefit payments:

Given that those long-term unemployed, who were previously eligible for social welfare payments, will now be receiving the new, merged benefit payment *Arbeitslosengeld II* instead, the reform will contribute to a substantial reduction of the number of people who qualify for social welfare benefit payments (*Sozialhilfe)*. From 1st January 2005, social welfare will be regulated by part XII of the German Social Code (*Sozialgesetzbuch XII,* known as *SGB XII*). According to government sources, less than ten per cent of those who were previously recipients of social welfare payments (2.81 million persons in 1.42 million households received social welfare benefits at the end of 2003), will in future be entitled to this type of subsistence benefit. The new provision (*Grundsicherung*) for older people over 65 and those who are fully handicapped, which came into force at the beginning of 2003, has been reintegrated into *SGB XII* and it is expected that, all in all, about 430,000 persons will receive cash benefits under this act from 2005 onwards. Furthermore, social welfare will continue to finance, in full or in part, the costs of care and rehabilitation for handicapped people in particular, but also for other people in need of care and support (including the homeless and people threatened by homelessness).

Division of tasks and financing between local and federal authorities:

While the tasks under *SGB XII* (former *Sozialhilfe*) remain the exclusive responsibility of the municipalities, responsibilities and tasks under the new provision for all long-term unemployed in need, *Arbeitslosengeld II* under *SGB II*, are usually divided among two actors: local authorities continue to be responsible for financing the costs of "appropriate" housing and heating for all people entitled to subsistence payments under *SGB II* and for providing personal and social support for long-term unemployed people, such as: addiction counselling, debt counselling, "psycho-social care", and childcare. The responsibility for the remaining tasks under *SGB II* (administration of payments for subsistence (other than housing); provision of job placement support, job and training schemes etc.) generally lies with the Federal Employment Services Agency.

However, as a kind of experiment, 69 local authorities all over Germany can opt for taking over these tasks as well. In both cases, the necessary resources for the second set of tasks under *SGB II* will be financed fully by national tax funds. It seems probable that in the majority of larger cities the norm will be intense cooperation between the local branch of the Federal Employment Services Agency and the municipal social administration. This approach is intended to provide financial and personal support in an integrated way. A new system of institutionalised cooperation in so-called "consortia" (*Arbeitsgemeinschaften*) is foreseen by SGB II.

The implications of the Hartz Reforms for the homeless and those threatened by homelessness:

Many details of the implementation of the new legislation have not yet become clear at the time of writing, but a number of obvious risks have to be mentioned in relation to homeless persons and those threatened with homelessness:

For the majority of long-term unemployed, the new legal situation will mean a substantial loss of transfer payments. A considerable part of those who could previously claim the old unemployment benefit *Arbeitslosenhilfe* will now lose their entitlement altogether because of harsher eligibility rules (this will be the case for up to an estimated 500,000 people, the majority of them being women, who have to rely on the income of their partners). For the remaining recipients, housing costs will only be paid as far as they are considered "appropriate". A large number of households will be asked to move to "appropriate" housing within six months or to take over payment of the exceeding part of their housing costs from their minimum income. The demand for low-cost housing and the risk of rent arrears will increase substantially. The upper limits for "appropriate" rents will usually be fixed by municipalities (which will create considerable local variations and rather restrictive limits, as previous experience with social welfare benefit payments show), but SGB II also provides that national government can pass by-laws in this respect and can define flat rate systems for covering the housing costs of the long-term unemployed.

While the reform relieves local authorities of the financial burden of subsistence payments for those long term-unemployed people who formerly received social welfare benefit, the authorities will now find themselves in the position of having to bear the housing costs (and the provision of social services) for those people formerly in receipt of unemployment benefit (*Arbeitslosenhilfe*). Furthermore from the first of January 2005, all people in receipt of payments for their housing costs under *SGB XII* and *SGB II* will no longer be entitled to housing benefit under the National Housing Benefit Act (*Bundeswohngeldgesetz*). So a much greater burden of housing costs for all long-term unemployed people and all people in receipt of subsistence benefits will lie with local authorities.[4] After massive opposition against expected negative financial consequences for the municipalities it was decided in July 2004 that national government will cover a certain part of housing costs under SGB II (29.1 percent, but the percentage can be adjusted according to the real costs) in order to guarantee a positive net effect for municipalities. However the municipal costs for housing the long term unemployed and poor people will still be much higher than before. On the other hand, municipalities are not in very good position to increase the chances of unemployed people to get access to affordable housing. The social housing stock has been shrinking massively in recent years and municipal shares for housing companies have been sold in order to reduce high municipal debts. Investment for new social housing is at a historic low.

Another factor leading to increased risks of long-term unemployed people becoming homeless are enforced sanctions under SGB II and the fact that recurrent sanctions can also lead to a reduction of the financial support for the costs of housing and heating. Almost every kind of employment has to be accepted, and if the unemployed do not comply with their duties to sign an "integration agreement", to search actively for work and to accept almost any job offer, they risk serious cuts of their subsistence benefits. Young people under 25 loose any entitlement for benefits for three months in such a case (only rents are covered by direct payments to landlords and meal vouchers are provided).

Almost every kind of employment has to be accepted, and if the unemployed do not comply with their duties to sign an "integration agreement", they risk serious cuts of their subsistence benefits.

New legal regulations for the prevention of threatened evictions are serving to complicate and hinder effective preventive work. The new legal regulation in SGB II (sect. 22, para. 5) provides for the possibility of assuming rent arrears, but only through the provision of credit, which will have to be paid back. Furthermore, this will only be provided in cases where eviction would prevent or hinder the recipient from taking up a concrete job offer. The regulation of SGB XII is more binding and can be used as a last resort for the long-term unemployed as well: municipalities are obliged to assume rent arrears in case of threatened homelessness and they can do this by way of credit or by way of grant aid. But if interpreted in a restrictive way the new wording of this regulation could lead to an exclusion of people who are threatened with eviction, but who are entitled neither to regular social welfare payments, nor to the new *Arbeitslosengeld II,* from any support. This could lead to increased homelessness among those households relying on social security payments (*Arbeitslosengeld I*, pensions etc.) and low wages. Recent research results, from more than 40 German cities, show that these households make up more than 30 per cent of the clientele of social services specialised in the prevention of homelessness.

Apart from a number of problems to combine support measures of SGB II and SGB XII for homeless people as well as for other people in need of support, it seems probable that the pressure to move responsibilities and applicants from one minimum income system to another will continue. In future, the main dividing line will be marked by the question of whether a long-term unemployed applicant is able to work (for at least 3 hours a day) and may therefore claim financial assistance and assistance for job integration from the 'Job Center' (under SGB II); if this cannot be established she or he will have to rely on social welfare benefit from the local authority (under SGB XII). People who stay in a socio-therapeutic institution ("stationary institution", *stationäre Einrichtung*) for more than six months and those with no fixed abode are explicitly excluded from receiving benefits under SGB II.

Conclusion

It is still too early to judge if the Hartz reforms will really lead to an increase of homelessness in Germany. Important organisational details are still unknown and there are intense and controversial public debates about the possible consequences of the reform. Those most hit by the reform are not the poor, but those who were entitled to higher transfer incomes in the past. But it can be taken for granted that individual hardship and risks of rent arrears and homelessness will increase. Much will depend on the economic development and the development of the housing market. Especially in East Germany there are high numbers of vacant dwellings, but unemployed people will increasingly be asked to move to economically dynamic areas, and in these areas housing shortages and homelessness are on the increase. Much will also depend on local ways of organising preventive services, of defining "appropriate" rent levels and on the rigidity of measures against those long term unemployed who do not succeed in reducing housing costs, which are judged to be "unreasonable". •

[1] The benefit for an adult single person will be 345 € in West Germany and 331 € in East Germany plus "reasonable" costs for housing and heating. The amount shall cover almost all costs of living and in contrast to regulations in the past additional single payments for special needs (clothes, furniture, household articles etc.) are included in the basic amount. Further single payments can only be claimed in very few exceptional occasions.

[2] Unemployment insurance benefit (or „Arbeitslosengeld I") is paid during the first year of unemployment for those who have contributed a minimum number of months to unemployment insurance. The level largely depends on former wages.

[3] The maximum of the additional allowance is 160 € for a single person, 320 € for spouses and 60 € per child living in the same household. After one year the additional allowance will be halved and after two years no additional allowance can be claimed any more.

[4] Housing benefit under the Bundeswohngeldgesetz

The Drastic Measures Adopted by Spain's New Socialist Government Fail to Remedy the Country's Endemic Housing Problems

By **Josep Castañé García**, *Président Associació Prohabitage.*

In mid-July, María Antonia Trujillo, the new Spanish Housing Minister and member of the PSOE (the Spanish socialist party), announced the implementation of what has become known as the "Emergency Housing Plan". The main aims of this set of eleven regulations are to guarantee access to subsidised and rental housing and to contain soaring property prices by waging war on real-estate speculation.

These measures will be integrated into the Housing Plan passed in January 2002 by the PP (the People's Party), the political group in power up until March of this year. According to the explanatory statement of the Royal Decree by which the measures have been introduced, the aim of the latter is to meet the housing needs of what it identifies as "large population groups in mid- to low-income brackets, and particularly young people, who are finding it increasingly difficult to access housing at reasonable prices".

This statement of intent contains the four maxims that have formed the backbone of Spanish housing policy to date: firstly, that the provision of housing has been delegated to the market, thus omitting its social dimension; secondly, the priority has been to encourage the purchase, rather than rental, of housing; thirdly, the housing needs of the most vulnerable members of society have been ignored and, fourthly, subsidised housing and public housing developments have all but disappeared from the market.

These four political priorities suggest that governments have regarded housing as a mere tool of economic policy, rather than one of the foundations of social policy. If this is the starting point for new governments, then it seems only logical that the aim of the PP's Housing Plan was merely to "correct the market loopholes" mainly affecting the middle classes.

Therefore, the majority of the measures in this plan only benefit those on incomes of over 1.5 times the minimum wage (460.5€ a month), which clearly overlooks the housing needs of the more vulnerable members of society. According to the INE (Spanish National Institute of Statistics), there are almost three million households in Spain on incomes of less than 1.5 times the minimum wage. Direct public actions, which have proven to be effective ways of helping more vulnerable groups, account for just 12.1% of public spending on housing.

This framework, the housing policy of the PP, is the basis for the measures to be introduced by Trujillo. With regard to this major determining factor, the Minister has explained that her measures will "expand on the aims" of the previous government's housing plan without, she added, questioning the principle that it be the market that would continue to cover the population's housing needs. In a statement to *El Mundo* newspaper on 25 July, the Minister reiterated her aims, "We want the private sector to play a part in the new housing policy so that it can contribute to the development of the Spanish economy and the benefit of its population. This is not an interventionist policy because these measures have been adopted with the consensus of the private sector and this is how it will be in the future".

If the government does not dare intervene in the real-estate market to address the way it operates, it comes as no surprise that the series of measures proposed by the Minister are limited to "offering funds" to those who cannot afford to pay the amounts demanded by the market for housing.

The so-called drastic measures include "fostering the development of subsidised housing" by increasing its purchase price, which amounts to little more than a camouflaged subsidy for those responsible for these developments. The measures also include the payment of premiums to those who renovate their empty properties to put them up for rent, and handing out temporary subsidies to tenants, preferably young people, to help them pay their rent.

These measures are set to benefit a series of groups: firstly, private developers, who are assured a profit from the hike in the sale price of public housing developments; secondly, property owners, who are paid a premium if they put an empty property on the market, and thirdly, workers earning the minimum wage.

Moreover, the tenant subsidies described in the measures will only benefit young people, thus excluding other groups such as single-parent families, young people without earnings and the socially excluded. Although they allow for the construction of 71,000 subsidised dwellings – 41,000 of which would be for rental and the remainder for sale – the new measures do not take into account the development of special housing, which would benefit those with fewer resources, as the financial requisites for the latter are minimal.

In addition, these measures would not be applied immediately because of the way in which housing powers are distributed across the country. The seventeen Autonomous Communities into which Spain is divided are responsible for exercising these powers. The central Spanish government limits itself to passing basic regulations and hence marking the course and priorities of property and housing. The effectiveness of these measures therefore depends on the agreements signed by the central government with each Autonomous Community, which can propose more ambitious targets, as is the case of Catalonia.

A Chronic Problem

Over the years, access to housing has become a social problem of colossal proportions. It is increasingly difficult – sometimes even impossible – for large segments of the population, particularly those on lower incomes, to purchase housing, whether on the free market or on the barely-existent public developments market. The central government and those of the Autonomous Communities have overlooked their constitutional duty to guarantee housing for all because they are still focussing on guaranteed housing for the middle classes, whose vote they must win because it could tilt the electoral scale one way or the other. In the light of this, it would not be straying too far to say that the housing policies of the PP and PSOE governments have not attempted to meet the housing needs of the population and have often responded only to the interests of the leading construction and real-estate groups.

Of all housing built in Europe, 40% is constructed in Spain. In the last year alone, construction began on 690,206 dwellings. This figure substantially exceeds what experts consider to be reasonable and necessary in the mid-term – between 350,000 and 375,000 dwellings a year, as stated in "The Social and Economic Situation in 2003", a document published by the INE (Spanish National Institute of Statistics).

The over-construction of housing has led to talk of the creation of a "property bubble" because investors have regarded real-estate purchase as an asset offering abundant short-term gains. The speculation generated around housing has led to an increase in the price of the latter at a year-on-year rate of 10%. In its 30 March–5 April 2002 issue, *The Economist* revealed that, from 1980 to 2001, the price of housing in Spain had increased by 726% in nominal terms and 124% in real terms (not counting annual inflation). This figure is six times that of the US and eight times that of France, Italy and Japan.

Not only must the Spanish housing situation contend with this out-of-control construction sector that raises blocks of flats at inaccessible prices, fostered by the fervent support of the government, its problems are further intensified and exacerbated by two other factors.

On the one hand, we have the vast number of empty dwellings. According to INE data, almost three million Spanish dwellings remain empty, which accounts for 13.90% of all housing in Spain (one in seven). This puts Spain at the top of a list of European countries – a position that is nothing to be proud of - while this degree of vacant housing is proof of the transformation of housing into an asset for investor speculation. On the other hand, the Spanish housing situation is further exacerbated by the fact that Spain has the lowest record of investment in this area: a meagre 0.3% of its GDP whereas the European average – before the last increase - was double this amount.

The priority of any public housing policy must be to meet the needs of its population. This target can only be met if social housing needs are first diagnosed and explored. Civic action is required to create an observatory to monitor this problem by systematising information on the population's housing needs. Although the right to housing can be guaranteed by market intervention, it is also secured by policies to prevent phenomena that could lead to residential exclusion. In this case, the tools for prevention would need to remain local in order to maintain their link with the individuals who could benefit from them.

The Housing Market: Lord and Master

The risky strategy of separating housing policy from social policy has led to the market taking over the provision of housing to the population, which has relieved the government of its compensatory role. This strategy has led to a constant increase in housing prices and a configuration of the Spanish real-estate market that has little in common with that of Europe as a whole.

However, the new Housing Minister trusts that her "drastic measures" will allow Spain to "converge with Europe on all levels", and has announced that she will fight to break what she has called the "culture of ownership that permeates Spanish society" by promoting rented housing.

Although over 80% of Spaniards do own their dwelling, this obsession is not the fruit of some idiosyncratic cultural trait: the government itself has stimulated and promoted real-estate purchase by offering tax benefits, to the detriment of property rental.

Since the government has repeatedly promoted the purchase of housing, it is not surprising that the two types of housing most accessible to sectors of society on lower incomes – rented housing and public developments – have all but disappeared from the Spanish real-estate market.

Spain's rental housing market is so insignificant that it would not be too much of an overstatement to say that it does not exist. Just 11.5% of housing was rented in 2001, while this figure stood at 15.2% in 1991. If we look back to 1950, rented housing accounted for over 50% of housing at this time. Spain's social housing also accounts for just 2% of all housing while the European average stands at 18%.

The government's treatment of subsidised housing has been equally negligent. In just ten years, levels have dropped by 12.11% (from 19.61% of the real-estate market total in 1992, to 7.5%, in 2002). Last year, the total number of completed dwellings in Spain stood at 459,135, of which 415,516 were free housing and just 43,619 subsidised. These figures indicate that both the central and autonomous governments of Spain have failed to use subsidised housing as a regulatory mechanism to control housing market prices, preferring instead to let the market dictate these prices.

The new Housing Minister has already warned that the aim of her "Drastic Housing Measures" is not to intervene in the market, but to provide housing to certain groups who were deprived of access on the free market because of their low earnings. In short, the aim of her "drastic measures" is not to lower property prices and guarantee housing for all, but rather to supply it by means of subsidies to "electorally-relevant" groups in society. •

New Housing Laws in the Brussels-Capital Region of Belgium

By **Pol Zimmer**, *Head of the Research Dept. of the SLRB.*

The Brussels-Capital region of Belgium recently[1] introduced new framework legislation, which has an impact on all areas of regional housing policy[2]. This article will seek to set out the main new elements, though it should be borne in mind that the new housing code is also intended to serve as general coordinating instrument for the whole body of actors and regulations in the area of regional housing policy. Once adopted, this framework legislation will need to be applied through a series of decrees setting out how the laws are to be enforced. These are necessary in order to provide a nuanced understanding of the implications of the new legislation and to offer a precise breakdown of the concrete modes of the laws. At the time of writing, only the first enforcement measures have been adopted, so it is still a bit early to discuss the impact of the housing code and even more so to try and offer any initial evaluations of this important regional legislative development. In light of this fact, this article will seek simply to offer a general presentation of the new housing code and particularly of the new elements it contains.

Housing in the Brussels-Capital Region

In contrast to the Flemish and Walloon regions, which are characterized by the fact that owner occupation is the majority tendency, in the Brussels-Capital region, most households live in rented accommodation[3] and 8.3% of the total number of households based in the Brussels Capital region live in social housing. In total, there are 38 320 social housing units in the region[4].

When one examines the developments in the region over the last few years, two main trends emerge: a relative decline in the financial situation[5] of the population in Brussels and strong increase in prices in the rental and sale housing markets, which, among other things, brings in its wake a growing demand for social housing and an erosion of the presence of a middle class population in the region.

The issues of housing quality and availability are therefore very central to the public debate on the housing question and have become, along with employment, some of the most major concerns of the inhabitants of the region.

The main new elements contained in the Housing Code

1) The establishment of a right to housing

Article 3 of the Order issued on the 17th of July 2003 refers back to the terms of article 23 of the Belgian constitution in relation to the "right to decent housing" and indicates clearly that the new measures put in place through the orders are intended to be part of the work towards achieving this essential goal. It may be considered therefore, both as an affirmation of the "right to decent housing" in regional law, where this notion had not been formally included up to now, and as a statement of the central objective of housing policy, that is to make this right a concrete reality for all, in accordance with predefined standards of security, hygiene and fittings should be included as standard. These standards will be laid down in the decrees on how the law is to be enforced.

It goes without saying that once the housing laws for the Brussels-Capital region have been fully adopted and coordinated, it is the full body of measures that are in place that will combine to deliver the objective set out and that will shape public action in relation to the "right to housing", which public authorities are responsible for ensuring for all.

2) Improvement of availability and quality of housing

2.1 Laying down minimum quality standards

The regional authorities are now empowered to set the basic norms of security and hygiene in relation to housing, as well as defining what level of fittings and facilities should be provided as standard. They will do so by clearly setting out the full extent of what is to be understood by each of these notions, and through the overarching statement that "anyone offering a property for rent, which does not meet the basic standards hereby defined by the government, is liable to prosecution"[6].

The founding principle, therefore, is that all housing offered for rental is required to meet certain basic norms, otherwise the landlord is liable to prosecution. Furthermore, it should be made clear that this basic principle, and all of the norms that arise from it, apply equally to the private market and to publicly owned social housing. The laws set out a series of procedures, of varying degrees of stringency, in order to guarantee what it lays down[7].

First and foremost of these procedures is the certification procedure, to certify both that standards have been met and that the inspection process has been observed. This standards-monitoring procedure assumes the creation of an Inspection Service within the Ministry of the Brussels-Capital region, which would be responsible for checking that governmental standards are respected in practice and for issuing certificates stating that standards have been met and that the inspection process has taken place.

The inspection process will be backed by two types of sanctions:

- an order may be passed, whereby the renting out of the property in question is forbidden until such a time as the landlord has acquired a certificate showing that an inspection process has taken place and that the property conforms with the set standards.
- alternatively, the sanction may take the form of administrative fines intended to have a dissuasive effect on landlords who have made a property available for rental that does not meet the standards set, with the exception of landlords who have requested that the inspection take place with a view to obtaining a certificate.

2.2 The "public management" rule

The creation of the "public management" rule is based on the objective of increasing the quantity of available and affordable housing, using existing housing stocks that, for various reasons, are not currently on the market. The rule is known as the "public management" rule because it will only be applied through regional, public housing companies.

The public management rule will be applicable to two categories of property:

- housing that is unoccupied for reasons unrelated to the will of the owner
- housing that was found to be inadequate when the inspection process to check conformity with the set standards was carried out, and which has not undergone renovation work in order to bring it up to the required standard and which hasn't been brought in line by the deadline stipulated in article 12 of the order issued to the landlord. In all scenarios, the property in question is not occupied by the housing owner or title-holder him/herself.

The general procedure[8], which is laid out below, will be adapted according to the type of housing in question. It takes places as follows:

1) By means of a registered letter, the public housing company puts forward the proposal to the property title owner that it will manage the property with a view to offering it for rent;
2) The title-owner has one month in which to respond to this offer;
3) If the response ifs negative, but without adequate justification, or if there is a failure to respond within the time limit laid down, the public housing company will send the title holder official notice that they must offer the property for rent within a pre-determined timeframe, allowing for possible renovations (the minimum period is two months), for a rent that is calculated on the basis of government criteria.
4) Once this deadline expires, the public management rule may be invoked in accordance with the procedure laid down in the order, which sets out the rights of the different parties involved.

3) The Creation of new information structures

3.1 The Housing Information Centre

The housing information centre (centre d'information pour le logement – CIL) is intended to be a service that offers "analysis of housing demand, comprehensive information and adequate guidance and advice." It is not simply intended as simply an information service, publishing forms and brochures, it is also intended to be a real frontline agency, whose sorting and referring will allow the public to access the information that corresponds to its needs and will help to orientate them towards the bodies that can meet these needs. The CIL would also like to be a true resource for those working in the housing sector, with the possibility of offering conferences or training for those active in the sector (local authorities, local housing authorities, voluntary sector, Public Centres for Social Action (Centre Public d'Action Sociale – CPAS) etc.). The government placed responsibility for this mission in the hands of the ministry.

In order to ensure that the public have access to full information and good guidance, this single access point must cover a wide domain of information: the grants and instruments that relate to the rental sector, to the market sector, to renovation or the fight against unsanitary housing, as well as the instruments managed at regional level, the supra-regional bodies or the voluntary sector.

The areas of information covered by the CIL are :

- regional financial grants;
- social housing;
- housing funds (buyers grants for the most part);
- Social Housing agencies;
- Municipalities and Public Centres for Social Actions (CPAS);
- The Development Company for the Brussels-Capital Region (La Société de développement de la région de Bruxelles-capitale – SRDB)
- The voluntary sector;
- Information concerning other specific areas such as:
  - organisations that gather and disseminate the addresses of properties for sale or for rent
  - certain certified building societies
  - basic information on duties, rateable value, VAT, stamp duty, housing rates and other additional communal rates
  - the "mainstream" local voluntary sector.

In order to avoid any confusion or conflicting competencies, the single access point that is the CIL will not be involved in processing individual files or in following up applications made to different bodies. In the same way, it will not be the role of the single access point to provide legal advice – there are plenty of existing organisations specialized in the area – nor is it intended to become a de facto social service

3.2 The regional housing observatory

From a general perspective, the aim of the observatory is to produce qualitative studies on a recurring basis:

- on the basis of adapted observation systems;
- in a way that allows regional authorities to adapt public housing policy to encompass the elements highlighted by the research;
- in such away that it takes account of changes in the environment that is being observed.

Thus, the observatory will have a four-fold function: to gather and share information, to evaluate, to provide support for decisions and to facilitate democratic debate. The role of public authorities is a regulatory one, which covers several aspects that the local authorities see as necessities, but which mainly concern the regulation of the market with a view to a better adaptation of supply and demand, in the areas of quality and quantity, improvement of the quality of housing and increased affordability.

The Observatory will work towards realising its objectives by carrying out different missions in the areas of production and dissemination of information that will feed into the formulation of action at regional level in the area of housing. These missions will include:

- The creation of a database to be updated annually, which will be the basis for the ongoing production of information by the Observatory. It will also form the basis for the yearly publication of the "Annual Report of the Regional Housing Observatory";
- The development of a series of studies, whose frequency of publication could vary in accordance with the issues or subjects examined: thus, for example, if there is a need to know more about the state of housing in the region than can be extrapolated on the basis of the statistics produced every ten years by the National Statistics Institute (INS), it would be possible to undertake a study based, for example, on the models developed in the other two regions in the area of housing. Clearly, there is little interest in undertaking a general, annual survey on this question, unless it were a complementary, progressive study of certain specific elements or of subgroups.

The observatory will also accord a great deal of importance to the dissemination of its work, in order to make it available to policy makers, but in also in order to make it available to all actors in the field of housing policy and more generally to all in the greater city area that constitutes the Brussels region.

The new body of laws as general coordinating instrument for housing policy

This presentation of the new elements that have been put in place through these housing laws should not, however, overshadow their vital role as a legislative coordinating instrument, bringing together all of the measures and the actors who have played a part in housing policy at regional level.

At the same time, it is not possible to summarise legislation that runs to some 200 articles to three or four pages and it is for this reason that the present article has focused on the presentation of the new elements that have come into being to complete or to correct the existing framework - the housing funds, the social housing agencies, the various types of financial aid, the voluntary housing sector etc. – which make up the basic structure and which the new housing code has not fundamentally changed.

Of course, it will be most interesting to examine the impact of this major legislative reform at a later date, in order to measure to what degree it has contributed to resolving, even partially, the problems that it seeks to deal with. It is important nonetheless to allow some time for the new measures to make themselves felt, as difficult as this may seem in the light of certain, increasingly widespread, pressing social questions. •

[1] Ordonnance du Code du logement du 17 juillet 2003 portant le Code du logement (Moniteur belge du 09.09.2003) et Ordonnance du 1 avril 2004 complétant l'Ordonnance le Code du logement du 17 juillet 2003 (Moniteur belge du 29.04.2004)

[2] En Belgique , le logement est une compétence des Régions, seuls certains éléments de la politique du logement afférant aux baux à loyer du marché privé locatif et certaines parts de la fiscalité immobilière restent de la compétence de l'Etat fédéral.

[3] Environs 58,6 % des ménages bruxellois (Institut national de statistiques 2001)

[4] Chiffres de 2003.

[5] Eu égard aux évolutions des deux autres Régions.

[6] Article 5 de l'Ordonnance du 17 juillet 2003

[7] Nous renvoyons pour plus de précisions au « SLRB Info » n° 35 pages 11 à 15 : cette revue est disponible auprès de la SLRB - Bibliothèque : téléphone 02/ 533 19 83 – aux 45/55 rue Jourdan à 1060 Bruxelles.

[8] Voir la note en bas de page précédente.

New legislation to curb the unlawful withholding of tenancy deposits in the UK

United Kingdom

By **Matt Cornish**, *Dept of Medias Shelter UK.* Contact:http://www.shelter.co.uk

In May this year, the UK Government announced its intention to introduce new legislation to protect private tenants' deposit and end the practice which had seen around 127,000 people unfairly deprived of up to £65 million by unscrupulous landlords every year. The long overdue law should provide an effective system to police the £0.8 Billion (€1.2bn) worth of tenants' money currently held by landlords and their agents in Britain, and help improve standards in the private rented sector.

This issue does not only affect the UK – a great many Governments throughout the world have both had to tackle and, in many instances, legislate to end the abuse. Not only is a huge amount money at stake in the UK, but the unfair withholding of deposits had become one of the most intractable problems that private tenants face. So much so, indeed, that many have come to simply accept it as an inevitable consequence of renting. This has caused a huge level of distrust between tenants and landlords.

The average sum of the deposits concerned is just over £500 – a large sum of money for most people, but even more so for the bulk of those in rented accommodation

The average sum of the deposits concerned is just over £500 – a large sum of money for most people, but even more so for the bulk of those in rented accommodation. It often causes serious difficulties leading to debt and even to homelessness, because in the face of such a huge financial blow, many people find they cannot raise the funds needed for a deposit on a new rented home. Those who have suffered from this abuse have often had to endure an uphill struggle to get their money back – and indeed only the brave few are prepared to endure the lengthy and relatively costly legal action required. Incredibly, even at the end of these proceedings, certain victims have found that landlords and agents simply ignored the courts' judgements.

Organisations like Shelter have increasingly been inundated with queries from distressed tenants looking for advice on how to get their money back from the cowboy landlords.

Along with Citizens Advice, the free national advice service, we launched a tenancy deposit campaign in August 2003, in order to get the Government to act. We managed to build broad support for the campaign, which included estate agents groups - such as the Association of Residential Letting Agents (ARLA) - over 180 MPs, local authorities and tenants groups.
Having launched the campaign in the clear knowledge that it was an issue that caused genuine hardship and profound ill feeling we were, nonetheless, taken aback by the strength and determination of our support base.

Inevitably, there was a small, but vocal minority of landlords who opposed it – and fought hard against our proposed scheme, which, we believed, would dramatically improve the relationship between tenants and landlords and create a bond of trust between both parties.

Initially the British Government had indicated that, while it did think that legislation might be needed, it first wished the Law Commission to consider what the appropriate route and model might be. Shelter and Citizen's Advice put up a staunch campaign against this, arguing that not only was it unnecessary - we could already learn from the successes and failures of other countries - but also that it would simply mean many more tenants would suffer the financial heartache of unfairly withheld money.

Government Ministers stuck rigidly to their position until, rather unexpectedly, the Housing Minister Keith Hill announced that "[the unfair withholding of deposits] is something the Government will not ignore, it is the right of the tenant to have their deposit safeguarded and it is the responsibility of Government to ensure they do."

You may be asking why this legislation came to be needed. After all, even though it has diminished in scale by comparison with home-ownership, private renting is still an attractive option for many UK citizens.

Although a wide range of the population do rent privately, they are far more likely to be vulnerable and be unable to afford the cost of a decent home, let alone mount legal action. Also, the balance of power in rental agreements lies firmly with the landlord. Attempts by tenants to enforce their rights run the risk that the landlord will decide to evict them rather than adhere to regulations.

As a result, landlords can impose conditions on tenants, which they have little choice other than to accept. This is particularly true in areas where there is a shortage of housing such as London and the South East. Here landlords have been able to insist tenants hand over large sums of money in deposits and charges before they can access a home.

A classic example was the case of a Methodist minister, who had his £600 deposit withheld when he and his family moved because of work. When he complained, a further bill for over £1,000 for fees, charges, redecoration and cleaning was sent to him. These were totally unwarranted and with Shelter's help, he eventually got his deposit back.

Charging spurious costs for unnecessary cleaning and redecorating is common practice among the rogue landlords. This is often in the face of evidence that the tenants left the property in a better condition than they found it. Many also demand extremely large amounts hoping to stop tenants from pursuing any claim for their deposit back.

Another typical example was that of a group of friends whose landlord refused to return their deposit of £1800 on their first rented home. Despite leaving the flat clean and tidy, he said major repairs and professional cleaning of the flat were needed. When they pursued him, he threatened them with a charge of a further £1400. With Shelter's help, they managed to get their money back, but it took nearly a year. Without their parents' assistance, they would not have had the deposit for their next home.

Now the Government has said it will act. While welcome, it is still unclear how the scheme they propose will operate. How, for example, do you make any legislation deliver a system to protect tenant's money in a cost effective way? How will disputes be resolved? A badly thought out scheme runs risk of simply delivering another layer of bureaucracy without any real benefit.

Many countries have already introduced legislation to tackle the problem, one notable success story being South Australia's system. Not only has it covered its running costs, the significant interest made on the money held is now being re-invested in affordable housing for rent. Anyone who needs to pay a deposit on their rented home puts it into an independently run scheme. This holds the money in trust for both landlord and tenant. At the end of the tenancy, the scheme releases the deposit immediately unless a claim has been made. An arbitration service is in place to settle disputes quickly and efficiently. The vast majority are resolved in days.

Although this may not be the ideal model for everywhere, its two, basic, underlying principles are worth noting: firstly, that deposits are held by an independent third party in trust for both the tenant and landlord and secondly, that any dispute is quickly, fairly and cheaply resolved. While a single statutory scheme run along the lines of the South Australian model is what many of we campaigners believe would be the most efficient way of doing things, we have accepted that there is value in alternative privately run schemes, since these may encourage landlords to adopt the principle of the legislation much faster.

The UK Government appears to be looking at taking this route. It is vital that these 'approved' schemes must not be a financial burden to the tenant and offer fair, low-cost and independent dispute resolution as any single statutory scheme would. Additionally, there would need to be some form of insurance against loss or misuse of the deposit by whoever was holding the money.

The voluntary scheme operated by the Association of Residential Letting Agents is a good example. In order to be part of the scheme, agents must belong to a recognised estate agent's body, with the cost of running the scheme borne by the members and not tenants. Although agents will continue to hold the deposits, these must be in bonded accounts. An independent dispute resolution service has been set up to deal with any problems and an assurance fund exists to guarantee the bond, should a member fail to pay out.

The way disputes are ultimately settled is one of the key unresolved issues in the current proposals. With any scheme, tenants at some point may have resort to legal action. The UK Government has indicated it would continue to rely on the county courts system, but this has proved ineffective in dealing with disputes. We need to have a better system.

Getting this right will not just correct a social injustice, important as that is. It could help improve the reputation and ultimately revitalise the private rented sector in the UK.

Britain has, proportionally, one of the smallest private rented sectors in Western Europe. This is, in part, down to that poor image private renting currently has in the UK and specifically the enormous gulf in management standards that exist between the good and poor private landlords and agents. If the UK Government is to have any prospect of acting on its stated desire to promote greater use of the private rented sector, particularly in delivering housing for low-income people, protecting tenants' deposits in a manner which is fair, which is speedy and which benefits all parties will be a major step in the right direction. •

The emergence of the administrative and legislative framework for the fight against homelessness in Ireland

Ireland

Administrative arrangements and service delivery mask an approach that is not truly rights-based.

By, **Dr. Padraic Kenna,** *Board Member of the Irish Council for Social Housing and Chairman of the FEANTSA Expert Group on Housing Rights*
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A historical overview of homelessness in the Irish State:

Since the foundation of the Irish State homeless people in Ireland have experienced a lesser form of citizenship, and the same is true today. Many were allowed to occupy beds in locked wards of psychiatric hospitals, officially and unofficially, as well as County Homes (former Workhouses). The care of homeless people was relegated to charitable bodies, poorly funded and with little supervision. In 1927, a count by the police showed some 3,257 people, including 901 children being homeless. There is a legacy of wandering homeless casual labourers or "*tramps,*" who walked from place to place seeking accommodation and food. Of course, it is now emerging that many of these were victims of institutionalised physical and sexual abuse within the care system at the time.[1]

Only in the 1970s were some new approaches adopted by emerging voluntary groups working with homeless people. In 1983, Senator Brendan Ryan introduced a Housing (Homeless Persons) Bill, requiring Local Authorities to provide housing for homeless people, and in 1984 he introduced the Vagrancy Laws Repeal Bill, neither of which was passed. The Bills were based on the UK Housing (Homeless Persons) Act 1977, which placed an obligation on Local Authorities to provide temporary and permanent housing for homeless people who were in priority need, had a local connection and were not intentionally homeless. The Housing (Homeless Persons) Bill 1982 marked a radical new approach in Ireland to universal housing provision. This Bill sought to place a mandatory duty on Local Authorities to house homeless people. The Minister at that time would not accept this obligation since it would impose a duty on Local Authorities. The needs of homeless people and families needing social housing were placed in conflict over housing resources.

After another private members Bill the Housing Act 1988 recognised the concept of homelessness for the first time in the Republic. It also granted discretionary powers to local authorities to make arrangements, including financial arrangements, for the provision of accommodation for a homeless person. Demands for clear housing rights for homeless people were dismissed, however in favour of State discretion.

The Irish Housing Act 1988 defined a person as being homeless if:

> *(a)* there is no accommodation available, which *in the opinion of the authority, he(sic), together with any other person who normally resides with him or who might reasonably be expected to reside with him , can reasonably occupy or remain in occupation of, or*
>
> *(b) he is living in a hospital, county home, night shelter or other such institution, and is so living because he has no accommodation of the kind referred to in paragraph (a)* and he is, *in the opinion of the authority, unable to provide accommodation from his own resources.*

Eoin O'Sullivan describes this development as significant.

> Until the 1980s, homeless people were at best a marginal concern to the Irish administrative and political system. Homeless people were seen as dropouts, vagrants, tramps, anti-social people, for the most part unwanted elderly men. They were cared for by a range of charities which crossed the spectrum of nineteenth century Protestant philanthropic societies to Catholic religious orders. In the twentieth century they were joined by radical campaigning groups and organisations which not only housed and cared for them, but argued that society as a whole had a responsibility for them and should ensure that they had the same rights as other citizens.[2]

The Housing Act 1988 remains the only piece of legislation in relation to homelessness, with the mandatory tri-annual assessments of housing need and homelessness since 1989. However, the numbers of homeless people officially counted continues to increase.

Table 1. Assessments of Homeless People by Local Authorities.[3]

	1989	*1991*	*1993*	*1996*	*1999*	*2002*
HomelessN/A	2,751	2,667	2,501	5,234	5,581	
Homeless waiting for local authority housing	987	1,507	1,452	979	2.219	2,468

New approaches in the 1990s.

The scandal of street homelessness in the booming Ireland of the "Celtic Tiger" in the late 1990s was a political embarrassment for the Government. In May 2000, The *Homelessness – an Integrated Strategy Report* 2000, was introduced to develop an integrated response to emergency, transitional and long-term housing for homeless people. It sought to promote inter-agency co-operation on health, education, employment etc between Government agencies and between the State and voluntary agencies.

Each Local Authority prepared a three-year action plan to provide appropriate services for homeless people, and these were examined in a report commissioned by four largest housing charities in 2002.[4] The report highlighted the weakness in the administrative approach behind the Strategy, and recommended that the Action Plans be put on a statutory basis with specific commitments and targets set.

In Dublin, where 75% of homelessness occurs, a new agency was established in 2001. The Homeless Agency is responsible for the co-ordination of statutory and voluntary services to people who are homeless in Dublin and leading those services in the implementation of its three-year action plan on homelessness. It operates under the direction of a partnership Board comprising representatives from the four Dublin local authorities, the health boards, the Eastern Region Health Authority, FAS, VEC, Probation and Welfare Services and the voluntary sector in Dublin. The Action Plan 2001 –2003 of the Agency proposed to work towards a continuum of care for homeless people and a partnership approach, with ten key action points. It promised 240 new hostel and refuge places and a maximum stay in emergency accommodation of six months. Focus Ireland has recently pointed out that the numbers of people sleeping rough in Dublin has declined from 312 in 2002 to 237 in 2004. Indeed, it is significant to note that the Director of the Homeless Agency stated that street counts in Dublin and London showed that Dublin had three times as many rough sleepers as London.[5]

In February 2002, a *Homelessness Prevention Strategy* was launched with four Ministers outlining the plans for the Department of Health, Justice, Education and Housing to prevent homelessness.[6] These involved transition units for prisoners, discharge policies for health authorities to prevent homelessness, measures targeted at early school leavers and housing assistance for sex offenders. Again there were no rights for homeless people, no targets and the Strategy had no legal standing.

These Strategies and Action Plans are unusual in that there is little reference to the rights of users of the services, or indeed any mechanism for consulting the users i.e. homeless people. While there has been almost a three-fold increase in spending on homelessness in the past few years, it is significant that the services for homeless people are provided in the main by charitable agencies rather than the State. There is no reference to anything which could be compared to a right to housing, and indeed the whole thrust of the Report is to bring the State and charitable agencies into a "partnership."

Since 1997 Ireland has adopted a *National Anti-Poverty Strategy (NAPS)* with a new and broader definition of poverty, involving the concept of "social exclusion," and a ten-year target for poverty reduction in Ireland. This recognised that lack of housing contributes to social exclusion, but housing and homelessness were virtually ignored in the measures taken under this Strategy. The UN Committee on Economic, Social and Cultural Rights in 1999 had called on Ireland to integrate a human rights approach into the Strategy. A review of NAPS carried out in 2001 involved representatives of voluntary and community groups, and their minority report indicated their unhappiness with some of the new targets set, and the absence of a rights based approach.[7]

They proposed new targets, such as that homeless people would not remain in emergency accommodation for longer than 6 months and that inappropriate institutional care would be eliminated by 2007. The review highlighted the need for a rights-based approach to the NAPS, which had been a strong feature of the NAPS consultation process with community and voluntary groups. It proposed that international human rights instruments adopted by Ireland would inform the future development of social inclusion policy.

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However, in the final published Government Strategy document, in 2002, *"Building an Inclusive Society",* the Cabinet appeared to have rejected most of the recommendations and targets, including all references to rights, and produced a report which generated the wrath of some NGOs.[8] However, it outlined plans for increased social housing provision and a commitment by end 2004 that sufficient and appropriate emergency accommodation would be available to rough sleepers. The implementation of the revised NAPS would be strengthened by the establishment of Social Inclusion Units in all relevant Departments. New institutional arrangements would include: a Cabinet Committee on social inclusion, chaired by the Taoiseach; a Senior Officials Group to support the Cabinet Committee; a National Office for Social Inclusion reporting to the Minister for Social, Community and Family Affairs; Social Inclusion Units in all key Government Departments and, on a phased basis, in Local Authorities; a Social Inclusion Consultative Group and Forum. These arrangements will involve the Combat Poverty Agency (CPA) in a supportive role; and The National Economic and Social Forum (NESF), in its role of monitoring the social inclusion element of Partnership Agreements.

Since the NAPS did not give any enforceable rights to those whom it was intended to benefit, the guardians of NAPS are confined to the agencies which the State invited to participate in its reviews. This type of approach - an administrative response with no rights for users of such services, either to consultation or complaint - is typical of Irish State reactions to demands for rights, or action to redress discrimination.

Housing Policy Approaches - Stepping Aside from Rights?

An examination of recent housing policy and social inclusion developments in Ireland raises the question as to whether the proliferation of non-statutory Strategies, Action Plans, and Agencies expresses a commitment to developing rights to housing. Perhaps it reflects more on a successful strategic management approach by the State in service provision, and a successful model of New Public Management.[9]

This approach has also been developed within some of the Council of Europe social inclusion literature on the treatment of justiciable international human rights, described as "social rights." This is largely interpreted within the public management approach as involving monitoring and enforcement (including a charter for users), improving resources within the system (minimise imbalances in resources between levels of administration), management and procedural issues, information and communication issues, psychological and socio-cultural issues and inadequate attention to vulnerable groups and regions.[10]

There are identified groups of people in Ireland whose housing needs are not being met by the current system, and for whom the right to housing is particularly important. The response from the Irish State has been on the basis of administrative arrangements and service delivery systems, usually following consultation, participation and partnership arrangements have taken place with groups seen to represent such people in housing need. The Plans and Strategies do not always have a statutory base, and at no stage is the concept of rights included in these Strategies and Actions plans. The editorial of the *Irish Times* described one such Strategy as suffering *"from imprecise bureaucratic language that disguises the shortfall of specific, immediate targets and absolute political commitments."*[11] In some ways, therefore, it is questionable whether there is still a commitment by the Irish State to rights-based approaches, in relation the economic, social and cultural rights obligations, which the State has signed and ratified at an international level.[12]

While there are no enforceable rights to housing in Ireland for vulnerable groups and those in housing need, there are a number of laws which allow Local Authorities and voluntary bodies to provide housing for these people. In addition, there are a number of Strategies and Action Plans which set out the administrative arrangements being undertaken by statutory and voluntary bodies to address homelessness, described above. The machinery of the State seeks to develop policies to resolve serious issues, such as homelessness, based on administrative responses, without statutory or legislative authority. Not only are these approaches very unresponsive to involvement of the users of those services, they seek to avoid any opportunity for an assertion of rights as a citizen availing of the services or responsibilities of the State, or even as a consumer of such services. Aside from the absence of rights to housing, there have been few cases to examine the operation of the States discretion in this area due to the restrictions in legal aid available to poor people.[13]

This new approach, however, makes it very difficult for voluntary agencies and NGOs who advocate for a right to housing, since their involvement is at the level of dealing with problems in the delivery of services, rather than at the level of policy making in relation to the resources and rights to be granted by the State to homeless people. Their advocacy edge is blunted by being involved in the *"joint responsibility,"* consultation and partnership arrangements. In fact, some NGOs find it increasingly difficult to raise the issue of a right to housing within these new arrangements.

It is worth recounting the recent definition of States obligations under Article 31 of the Revised European Social Charter 1996.

> The Committee considers that effectiveness of the right to adequate housing implies its legal protection. This means that tenants or occupiers must have access to affordable and impartial judicial and other remedies. •

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[1] See Raftery, M. & O' Sullivan. E. (1999) Suffer the Little Children. Dublin: New Ireland.

[2] Harvey, "The Use of Legislation to Address a Social Problem. The Example of the Housing Act 1988," (1995) Administration, Vol. 4, No.1, pp. 76-85.

[3] Department of Environment Annual Housing Statistics Bulletins.

[4] Housing Access for All? An analysis of Housing Strategies and Homeless Action Plans. 2003.

[5] Homeless Agency. Press Release. 29th November 2002.

[6] Irish Times 28th February 2002. p. 6.

[7] Department of Environment (July 2000) Report of the NAPS Working Group on Housing and Accommodation. Also Goodbody Consultants, Review of the NAPS, Framework Document, November 2001, Department of Social, Community and Family Affairs.

[8] See Letters to the Editor, Irish Times 11/3/2002 on NAPS.

[9] See Hood, C. (2000) Art of the State, Culture, Rhetoric and Public Management. Oxford: OUP. See also Barzelay, M. (2001) The New Public Management. University of California.

[10] See Daly, M. (2003) Access to Social Rights in Europe. Strasbourg: Council of Europe Publishing. For a detailed rejection of rights as a threat to the modern public service bureaucratic approach, seen in the context of obligations on the State to guarantee a minimum level of rights and services, see Nolan, B. (2003) On Rights-Based Services for People with Disabilities. Dublin: ESRI.

[11] See National Anti-Poverty Strategy (1997), and (2002), DoE&LG. Homelessness – An Integrated Strategy. (2000), Homelessness – a Preventative Strategy, (2002), Health Strategy, (2001), Action Plan on Homelessness in Dublin, 2001-2003. (2001). Homelessness Action Plans of Local Authorities,

[12] Irish Times 28th February 2002. p. 17.

[13] See Kenna. Rights to Housing in Ireland in Leckie, S. (ed.) (2003) National Perspectives on Housing Rights. The Hague: Kluwer Law.

[14] See Whyte, G. (2002) Social Inclusion and the Legal System.