

27 APRIL 2018

Why the obligations contained in European case-law must be turned into indicators to assess progress on the right to housing

In January 2018, the European Committee of Social Rights (ECSR) of the Council of Europe published its 2017 **Conclusions** on the articles of the European Social Charter relating to health, social security and social protection.

In these conclusions, the European Committee of Social Rights warned that the poverty level in most EU Member States was far too high and that the measures taken to remedy this issue were insufficient¹. A large number of European countries have been found to be in non-conformity with **Article 13§1 of the Revised Social Charter**- the right to adequate assistance for every person in need - which includes the *right to shelter*. (See [here](#) for more detail).

Under article **13§1**, States have the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing, i.e. *beyond emergency assistance*. They have also to ensure the right to emergency social and medical assistance to persons unlawfully present in their territory. At a time when Europe is facing an unprecedented challenge to give shelter to third country nationals, the Committee recalls Member States that “*persons in an irregular situation must have a legally recognized right to the satisfaction of basic human material needs (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need*”.

The Committee explicitly mentions the **FEANTSA vs the Netherlands Collective Complaint**² to remind Member States that they must ensure this right is made *effective also in practice*. The Committee states that they cannot accept that governments are “*halting the provision of such basic emergency assistance as shelter, guaranteed under Article 13 as a subjective right, to individuals in a highly precarious situation*”.

These or similar arguments are included in the conclusions for many EU countries: Belgium, Bulgaria, Finland, Hungary, Ireland, Italy, Lithuania, Latvia or Spain, just to mention some, and they require from them to *explain how these requirements are met in law and in practice* in the next report.

FEANTSA would like to state that many European countries are facing difficulties in providing emergency accommodation, not only for persons unlawfully present in their territory, but also for many of the nationals of Members States, as street homelessness is a worrying phenomenon in many countries in Europe, as reflected in the latest Overview of Housing Exclusion in Europe³.

The Conclusions of the ECSR come at a crucial moment, just a few months **after the European Pillar of Social Rights (EPSR)** was declared in Gothenburg in November 2017. FEANTSA was disappointed not

¹ In this respect, see <https://rm.coe.int/press-briefing-highlights-conclusions-2017/168077fee0>

² Complaint No. 86/2012, decision on the merits of 2 July 2014, §187

³ Third Overview of Housing Exclusion in Europe 2018, FEANTSA and Fondation Abbe Pierre, 2018

to see any kind of reaction from the European Commission in relation to the conclusions mentioned above.

For FEANTSA, as for many other organizations defending human rights in the EU, **the European Pillar of Social Rights** is a unique opportunity not only to have social rights firmly on the EU Agenda, but to progressively achieve their effective implementation.

FEANTSA is particularly interested by **Principle 19 of the EPSR** which contains the right to “*housing and assistance for the homeless*”:

1. Access to social housing or housing assistance of good quality shall be provided for those in need.
2. Vulnerable people have the right to appropriate assistance and protection against forced eviction.
3. Adequate shelter and services shall be provided to the homeless in order to promote their social inclusion.

The provision builds upon **Article 34 §3 of the Charter of Fundamental Rights of the European Union (EUCFR)** which recognises the right to social and housing assistance in order to ensure a decent existence for all those who lack sufficient resources. The Explanations⁴ state that paragraph **34 §3** of the EUCFR draws on **Articles 30 and 31** of the **Revised European Social Charter (ESC)** which provide for a right to protection against poverty and social exclusion, and a right to housing, respectively. Most of the Articles of the Charter are worded identically or are clearly based on rights set out in the European Convention on Human Rights and the European Social Charter and Revised Charter.

FEANTSA has already stressed the need to use Priority 19 to create more political ambition and to form concrete measures to put an end to homelessness and secure the right to housing for all,⁵ as well as developing the right indicators to measure progress.

FEANTSA believes that it is time to enforce social rights at EU level. Social rights and hence housing rights have to be fully addressed by EU law and policy and there is a unique instrument that can help us do that: the obligations contained in **European case-law which set positive obligations on States to fulfil the right to housing**⁶.

For many years, not only the European Court of Human Rights and the European Committee of Social Rights of the Council of Europe, but also the UN Committee on Economic, Social and Cultural Rights, and the Court of Justice of the European Union, have issued decisions on the exact meaning of social rights, particularly in relation to housing. These decisions can and should be used as a resource to uphold and promote social rights in Europe.

The European Committee of Social Rights sets out that when the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State party must take measures which allow it to achieve the objectives of the Charter *within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources*.

⁴ The Explanations relating to the Charter of Fundamental Rights: [OJ 2007/C 303/02](http://www.european-council.europa.eu/media/400070/EN/13000/13000_en.pdf).

⁵ FEANTSA Responds to the European Pillar of Social Rights. <http://www.feantsa.org/en/press-release/2017/04/27/press-release-feantsa-responds-to-the-european-pillar-of-social-rights?bcParent=27>

⁶ Housing-related binding obligations on states from European and international case law: http://www.housingrightswatch.org/sites/default/files/2016.06_-_housing-related_binding_obligations-2.pdf

Furthermore, in *FEANTSA v. France*⁷, the ECSR pointed out that housing and social rights measures taken must be *practical and effective*, rather than purely theoretical. States must:

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

While this approach relates to the European Social Charter, FEANTSA believes that this model should be adopted in terms of the promotion of the Charter of Fundamental Rights in the context of combating homelessness and housing exclusion within the European Pillar of Social Rights.

For more information, please contact Maria Aldanas, FEANTSA Policy Officer:
maria.jose.aldanas@feantsa.org

⁷ Decision on the merits: European Federation of National Organisations working with the Homeless (FEANTSA) v. France, Collective Complaint No. 39/2006 <http://hudoc.esc.coe.int/eng/?i=cc-39-2006-dmerits-en>, paras 55-56.