newsletter

HOUSING RIGHTS WATCH

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FEANTSA

This newsletter is available online at the Transnational Exchange section of FEANTSA's website: www.feantsa.org

Editorial

Welcome to the Housing Rights Watch Newsletter for autumn 2012.

This edition of the Housing Rights Watch newsletter brings you analysis on the European Union Court of Justice (CJEU) decision in the Kamberaj case, an insight into the right to housing in Belgium, and two articles that continue this newsletter's focus on the criminalization of homelessness and the joint HRW and FEANTSA campaign: Poverty is Not a Crime. For more information about this campaign please visit: www.povertyisnotacrime.org

The Right to Housing

Padraic Kenna illustrates how the Kamberaj case is the first, but certainly not the last, in which the Court examines how article 34 (the right to housing assistance) of The European Union's Charter of Fundamental Rights can be invoked. As Kenna points out, the Charter can only be used as a line of defence in cases where EU law is being applied in a national context. This case of an Albanian immigrant who had been living in Italy since 1994, but was suddenly denied housing benefit, met the rather steep criteria required to link local or national housing policy to the EU's Charter of Fundamental Rights. When you read the article, Kenna will help you to see that at some point in the near future, the EU will have to start paying more attention to the jurisprudence of Articles 30 and 31 of the Council of Europe's Revised Social Charter, along with the jurisprudence arising from FEANTSA's collective complaint against France in 2006. These are important and progressive steps for the EU in terms of housing rights and HRW will continue to follow and report with interest.

Marilene De Mol's article takes us to Belgium to look at how the national right to housing is applied. She also discusses the need to consider different approaches to housing beyond the traditional conceptions – which are clearly not sufficient to deal with the rising need for affordable, quality housing in Belgium.

Poverty is not a Crime

In June 2012, HRW launched a campaign to fight the criminalisation and penalisation of homelessness in the European Union. The campaign will raise awareness about the impact of laws and policies that criminalise the behaviour of homeless people when they are in public spaces. Visit the website www.povertyisnotacrime.org for information, for example, we have conducted a study of the antisocial behaviour laws in most EU Member States, and will be publishing a European research report on the criminalisation and penalisation of homelessness and poverty later this year. You can join the campaign: since most of the laws are made a local level, you can take action in your city. Watch the website and follow us on facebook (www.facebook.com/HousingRightsWatch) and Twitter (www.twitter.com/rightohousing) for updates.

Mariann Dósa and Éva Tessza Udvarhelyi from A Város Mindenkié (The City is for All), in Budapest, Hungary write about the criminalization of homelessness. Dósa and Udvarhelyi take us through the recent history of homelessness in Hungary and show us the roots of the cruel law passed last year that made rough sleeping illegal and saw the opening of 'holding cells' in some homeless shelters in Hungary.

Finally, as usual, the newsletter provides updates on case from law the European Court of Human rights, reviews of new publications of interest and information about relevant events.

Please send us your comments and suggestions: samara.jones@feantsa.org

Samara Jones
Housing Rights Watch

The Kamberaj Case and the EU Charter of Fundamental Rights

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Case 571/10. *Servet Kamberaj v Istituto per l'Edilizia sociale della Provincia autonoma di Bolzano (IPES) and Others.*
Reference for a preliminary ruling: Tribunale di Bolzano - Italy.
Judgment of the Court (Grand Chamber) of 24 April 2012.
http://curia.europa.eu/juris/liste.jsf?language=en&num=C-571/10

Introduction

Since the creation of the Charter of Fundamental Rights (CFR) in 2000, housing rights advocates have looked to EU law to legal definitions of minimum housing standards and State obligations. Although only "solemnly proclaimed" initially, Article 34(3) of the Charter states:

> *In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.*

Indeed, the European Court of Justice (now Court of Justice of the European Union - CJEU) has been noticeably slow to give legal weight to the CFR, and European governments and officials directed its rights approach into "soft law" measures, rather than the development of harmonized EU standards of housing for all. Agencies such as the Fundamental Rights Agency have been restricted in their terms of reference from developing enforceable rights. Yet, with the incorporation of the EU Charter of Fundamental Rights (CFR) into EU law, on the same basis as the Treaties, the situation has now changed significantly.[1] The Charter became binding EU law in December 2009. The FEANTSA Expert Group on Housing Rights has been tracking the development of housing rights under the CFR, but only now are cases being decided which clarify the CFR obligations.

1 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (OJ C 83/13, 30.3.2010). Available at: http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2010:083:SOM:EN:HTML

As part of binding EU Treaty law, this provision has the potential to create an EU wide minimum standard for housing and housing assistance, offering a wider legitimacy for measures to alleviate and prevent homelessness. Of course, the CFR is not a free-standing human rights instrument, but can only be invoked where there is an EU issue involved, such as a Directive, Regulation or Treaty provision. This nexus is created where a Member State or an EU institution is operating under a provision of EU law, including where the provision is a national or local law based on an EU provision. According to the CURIA (the EU law database) the CFR has been referred to in 86 judgments of the CJEU between 2010 and 2011, although Article 34 has not been litigated until this case.[2]

The Kamberaj Case

Mr Kamberaj, an Albanian national, residing legally in Italy since 1994, was refused housing benefit on the grounds that the funds allocated for third-country nationals were exhausted. He had received this benefit between 1998 and 2008 under a provincial law. Italian nationals were able to continue to receive these housing benefits, but third-country nationals were not. Mr Kamberaj claimed that there was discrimination and a breach of EU law. He relied on Article 11 of the Long Term Residents Directive[3] and Article 34 of the CFR. Article 11(d) states that long term residents "shall enjoy equal treatment with nationals" as regards "social security, social assistance and social protection as defined by national law," while Article 11(f) obliges equal treatment in access to goods and services and the supply of goods and services made available to the public and to procedures for obtaining housing. However, under Article 11(4) Member States may limit equal treatment to "core benefits."

The CJEU had to consider whether housing benefits fell under the concept of social security and assistance as set out in the Directive and, secondly, whether the Italian State could limit the principle of equal treatment to "core benefits" (allowed in Article 11(4) of the Directive), in such a way as to exclude housing benefit. The Respondents claimed that since these benefits were defined and authorized under national law the CJEU could not apply an autonomous and uniform definition of social security and social assistance to that national law. This is an issue which resonates with homeless legislation at national and local level, where provision is authorized under national and local laws, and States resist any redefinition of their obligations arising from EU law, and especially the CFR.

The Interface between National and EU Law

The Opinion of Advocate General Bot set out the background law for the Court. This clarified that when EU legislation has made a reference to national law, it is not for the CJEU to give the terms concerned an autonomous and uniform definition under EU law. However, the absence of such an autonomous and uniform definition under EU law does not mean that the Member States may undermine the effectiveness of Directive 2003/109 when applying the principle of equal treatment provided for in that provision.[4] Thus, while respecting the differences between Member States national law and the EU provisions, nevertheless, the CJEU was not willing to accept any national measures which undermined the effectiveness of the EU provision. This approach has great potential in relation to article 34(3).

Indeed, the impact of Article 34(3) on the interpretation of the obligations in the Long Term Residents Directive was also a key issue. It follows that, when determining social security, social assistance and social protection measures defined by national law and subject to equal treatment under EU law, Member States "must comply with the rights and principles provided for under the Charter including those laid down under Article 34 therof."[5] Again, this principle can be applied to a whole range of EU measures which relate to homeless persons, the most recent of which the UN Convention on the Rights of Persons with Disabilities (CRPD) ratified by the EU, entered into force on 22 January 2012. Indeed, Article 216(2) TFEU states that "[Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States],"

2 Saiz Arnaz, A. & Torres Perez, A. (2012) *Main trends in the recent case law of the EU Court of Justice and the European Court of Human Rights in the field of fundamental rights – Study,* Brussels, European Parliament, PE462.446.

3 Council Directive 2003/109 of 25 November 2003 concerning the status of third country nationals who are long-term residents.

4 Case C-571/10 Opinion of the Advocate General Bot, para 78.

5 Case C-571/10 Opinion of the Advocate General Bot, para 80.

thus giving a basis in EU law to the treatment of homeless people with disability. Of course, the Commission is bound to take into account the CFR and the UNCRPD in its actions and proposals, although there seems to little evidence that Article 34(3) is being properly considered in this context.[6]

Decision of the CJEU

In this case, the Grand Chamber of the CJEU ruled that the meaning of "core benefits" under the Directive, must be interpreted both in the context of the integration objectives of the Long-Term Residents Directive, and also in the context of Article 34(3) CFR. Advocate General Bot had pointed out that, so far as the benefit in question fulfils the purpose set out in Article 34(3), it cannot be considered, under EU law, as not being part of the "core benefits" of the Directive.[7] Thus, the Article 11 of the Long Term Residents Directive must be interpreted as precluding a national or local law which provides different treatment for third-country nationals enjoying the benefits of the Directive, in relation to housing benefit, with national residents.

The CJEU referred to Recital 3 of the Directive which referred to the Charter, as is common in all Directives since 2000. Clearly, this provides an avenue for introducing CFR proofing of Member State implementation of those Directives, opening up new opportunities to investigate compliance with Article 34(3) obligations.

Conclusion

In the *Kamberaj* case the CJEU was not asked to determine what level of housing and social assistance would ensure a decent existence under Article 34(3) CFR. However, it is inevitable that this issue will emerge soon. The binary nature of the Article 34(3) terminology - *in accordance with the rules laid down by Community law and national laws and practices,* will be used by States to emphasise the subsidiarity principle and the restrict the CJEU from creating autonomous and uniform definitions. However, the *Kamberaj* case shows that the CJEU is unwilling to allow this dissonance to undermine the effectiveness and objectives of EU provisions. In this context, the Explanations attached to the CFR will become more significant for the CJEU, particularly as Article 52(7) of the CFR provides that "[T]he Explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States."[8] The Explanations relating to Article 34(3) state:

Paragraph 3 draws on Article 13 of the European Social Charter and Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article 153 of the Treaty on the Functioning of the European Union.

Clearly, the jurisprudence of Articles 30 and 31 of the Revised European Social Charter, including the *FEANTSA v France* Collective Complaint will become more central to the interpretation of the CFR. It is also likely that the obligations of "ensuring a decent existence" will also become the focus of consideration. Here the range of definitions of social exclusion, poverty and homelessness developed by FEANTSA and others will provide valuable guidance to the CJEU.

6 See COMMISSION STAFF WORKING PAPER, *Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments,* Brussels, 6.5.2011 SEC(2011) 567 final at 5.

7 Case C-571/10 Opinion of the Advocate General Bot, para 92.

8 *Explanations Relating to the Charter of Fundamental Rights* (2007/C 303/02)

Moving Forward on the Right to Housing in Belgium

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*The **Service Combating Poverty and Social Exclusion** assesses how effectively the fundamental rights of those who live in unfavourable socio-economic conditions are enforced: the right to adequate housing, the right to energy, right to the protection of family life, the right to social protection, the right to health care…in order to do so, it organises in-depth consultations with various stakeholders: associations of and for people experiencing poverty, the CPAS (Public Social Welfare Centres) social representatives, professionals working in a variety of sectors, administrations, etc. Based on this work, they draw up analysis and recommendations targeted at the country's political leaders, with a view to restoring the conditions necessary for the enjoyment of these basic rights. These analysis and recommendations are debated within all Governments and Parliaments as well as within advisory bodies. Entirely independent, this tool for the fight against poverty was created by the Federal state, the Communities and les Regions, through a cooperation agreement signed by all Governments and approved by all Parliaments.*

This article is based on the latest Biannual Report from the Service Combating Poverty and Social Exclusion, published in 2011.[1] A significant part of the report is in fact dedicated to housing. Given the way in which our reports are drawn up, summarising their content is no easy task. Indeed, each chapter is the result of a lengthy consultation process bringing together poor people, the associations of and for homeless people, social service providers and professionals from various sectors, amongst others. At the end of a dialogue lasting almost two years, the Service puts forward analysis and recommendations based on content produced by the consultation group directed at the relevant policy makers in Belgium. The very nature of this working method means the Service is obliged to produce a nuanced analysis and take everybody's views on board. It is therefore impossible to summarise the whole of the section devoted to housing without distorting its content. Instead, let us attempt to isolate some of the key threads which run through this part of the report.

The starting point: a section of the population experiences major difficulty in finding adequate housing and in holding on to it. In other words, the right to adequate housing enshrined in the Constitution is not always respected.

'My monthly income is 766 Euros and I pay 364 Euros a month to rent a small studio. That's almost half my income. After I've paid my fixed costs, I've got 200 Euros left to live on. That's less than 7 Euros a day to pay for food, clothes, my mobile phone, transport, etc.'[2]

Behind this snippet of an account- which unfortunately is in no way out of the ordinary- from a person living in extremely difficult conditions, there is a whole host of factors and mechanisms are at play which we have attempted to highlight in our report.

A policy focusing chiefly on access to property

For many years, housing policies, and the resources allocated to them, have been largely devoted to encouraging access to property. And yet it is predominantly those in the higher categories of income who are able to become property owners. The figures clearly demonstrate that subsidies in this field are of greater benefit to those on medium and high incomes: in 2011, the lower- income category scarcely used up 3% of the budget allocated to tax deductions for a primary residence. Not to mention the the fact that the people whose income is below the tax threshold are quite simply unable to benefit in any way whatsoever from this type of tax incentives. If we add to that the considerable increase in house prices, which has chiefly affected cheaper housing, becoming a home owner has turned into a pipe dream for the poorest members of society.

Understandably, these people then turn to the rental market. The acute insecurity of tenants is notably illustrated by the risk of poverty they incur, markedly higher than that of home owners: 29.5% of the former live below the risk-of-poverty line compared to 9.1% of the latter.

1 An inter-regional public service. For more information, go to: www.luttepauvrete.be

2 Den Durpel - Samenlevingsopbouw Oost-Vlaanderen - Welzijnsschakels (2009). *Recht op wonenvooriedereen?*, p. 22.

A shortage of affordable housing

Of course, one of the possible solutions to finding an affordable home is public housing. We will not dwell here on the figures related this issue- the waiting times for these houses are enough to make your head spin.

On the private market, poor people encounter a whole host of difficulties. As the above account clearly shows, the price of rent and its impact on a person's budget are near the top of the list. Proportionally, poor people are forced to set aside a larger share of their budget to pay for a house often of vastly inferior quality than people who can rely on a higher income. The poorest households allocate 31.1% of their income to the rent whilst for the richest households this proportion is reduced to 17.4%. Furthermore, it is precisely the lowest rent prices which have experienced the sharpest increase (an example in Brussels between 2008 and 2010: 25% of the cheapest rents increased by 10% to reach an average of 450 Euros in 2010).

Alternative courses of action

Faced with the lack of structural measures in place, some people living in poverty opt for alternative solutions; for example making a caravan or a chalet (holiday accommodation) their permanent home, occupying an empty building, sharing a house with others (solidarity housing) and even resorting to building their building their own houses on public or private land without permission or permits… However, these alternative forms of accommodation often fall foul of negative stereotypes and the regulations currently in force are not adapted to this type of housing. The status of cohabitation, for example, penalises the solidarity between people who wish to live together whilst receiving welfare payments. This is- one more- glaring inequality between the people who benefit from a replacement income and the others who are able to live together to make savings of scale. Amongst the consequences of this hostility towards forms of accommodation which defy the traditional vision of housing, it is also interesting to flag up the problems linked to registering an official address. Indeed, using the 'abnormality' of their housing as a pretext, some town councils refuse- despite the fact it is illegal- to officially register the address of these people who are in reality living on their soil. This brings with it serious consequences for these residents (difficulty in receiving their administrative correspondence and therefore in claiming certain benefits, in exercising their right to vote…).

Despite the fact that these alternative forms of housing often constitute a last resort or a forced choice, they can prove highly valuable for many inhabitants. Their efforts to set up home do not simply involve finding a roof over their head. They allow them to take active control of their own lives and of their search for accommodation.

Their self-esteem is also increased and the difficulties which they encounter can generally be overcome through adapted social support. Furthermore, the collaborative nature of their project also acts as a defence against isolation. Therefore, there is a great deal to be gained in broadening the concept of accommodation and these alternative forms of accommodation deserve better recognition.

Moving towards an obligation to deliver concrete results

Alongside the chapter on alternative forms of housing, our report also examined the possibility of attaching an obligation to deliver results to housing policy. Authorities would be responsible for meeting this obligation instead of simply providing resources which is currently place. We should point out that several instruments have already been put in place in Belgium to ensure this right to housing is more effectively enforced. In the case of re-housing following eviction on the grounds that accommodation was of sub-standard quality, these mechanisms move towards imposing an obligation to deliver concrete results, with the support of a number of court decisions. However, such ambition cannot always be detected elsewhere in the system. We might consider, for example, the law on the requisition of unoccupied buildings or the provisions on the rental guarantee.

The chapter describes experiments conducted abroad (France and Scotland) which teach us that such an obligation to deliver on the right to housing can compel authorities to take more ambitious structural measures in order to develop the stock of rental accommodation available and fill a number of gaps. It also leads to improved recognition of the people concerned as legal persons with rights. Moreover, such an obligation allows us to turn current ways of thinking on their head: access to housing is no longer the possible outcome of political decision but rather the starting point.

Let us remind ourselves of the basic fact: having a house where you feel at home is an integral part of human dignity and the right to housing is enshrined in the Belgian

Constitution. It is time to consider how this fundamental right might be more effectively enforced and to take action in order to produce innovative housing solutions which are within the reach of the poorest members of society.

For more information on our publications and activities, go to: www.luttepauvrete.be

For further reading on the housing crisis in Belgium:

Les Echos du Logement (No. 2 – published in August 2012)

Published in French, this edition of the Echos du Logement includes two articles on alternative housing by Nicolas Bernard and by Marilène De Mol, as well as a comparison of the application of the right to housing in France and Scotland by Gilles Van Impe.

http://dgo4.spw.wallonie.be/dgatlp/dgatlp/Pages/DGATLP/Dwnld/Echos/EchosLog12_2.pdf

The increasing criminalization of homelessness in Hungary

By MARIANN DÓSA and ÉVA TESSZA UDVARHELYI, *A Város Mindenkié (The City is for All), Budapest, Hungary*
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The socio-spatial exclusion of street homeless people is a powerful trend in many cities all over the world. While according to Doherty et al. (2008), these processes are less pervasive in Europe than in the US, a number of post-socialist countries stand out with a revival of anti-homeless policies. Hungary, in particular, has recently experienced a surge in exclusionary practices and policies both locally and nationally. From a broader perspective, since Hungary's transition from state socialism to neoliberal capitalism in the 1980s, there has been a general tendency towards institutionalizing the exclusion and criminalization of poor and marginalized groups. In the following, we will first look at the history of homelessness in Hungary over the past decades, then we will give an overview of the responses the state has offered as well as the reasons for the growing criminalization of homelessness.

Homelessness in Hungary

During the period of "existing socialism", from the 1950s to the 1980s, homelessness officially did not exist in Hungary. On the one hand, this was due to centrally planned housing policies that provided subsidized housing on a mass scale and a policy of full employment that ensured some income for the majority of the population. In addition, during this period, the Hungarian state developed a relatively robust social safety net through a range of subsidized and universally available services such as education and healthcare. Referring to the socialist welfare state in Hungary, sociologist Zsuzsa Ferge (1999) argues that "the most positive outcome of 'socialist dictatorship' is the reduction of the civilisation gap both between east and west, and between the higher and lower echelons of society." On the other hand, the socialist state denied the existence of poverty and social scientists who studied poverty were often silenced. Besides ideological suppression, homelessness and poverty were also disappeared through criminalization and institutionalization. For example, people who did not have a permanent place to stay were in danger of deportation to correctional facilities or hospitals, and those who were found loitering or unemployed were deemed guilty of "dangerous avoidance of work", an offence that could be punished by a fine, compulsory public work and/or municipal expulsion.

However, the collapse of the planned economy that led to massive deindustrialization, a rapid decline of formal employment and a proliferation of poverty wage jobs, resulted in the rise of mass homelessness already in the 1980s. After the transition to market capitalism, hidden

poverty promptly surfaced and the industrial proletariat and socialist-era middle class experienced large-scale impoverishment (Szalai, 2002). All in all, poverty in Hungary increased over threefold between 1989 and 2000 (Ferge, 2002, p. 15).

Under both domestic and international pressure for market liberalization, deregulation and a major restructuring of public expenditures, successive governments after 1989 have dismantled a large part of the social welfare system and privatized public assets including firms, land and housing. In addition, many formerly state-owned factories went bankrupt or were shut down. As the number of beds in workers' hostels decreased from 60.000 to 6.000 (Tosics et al. 2003), tens of thousands of people (mostly men) found themselves not only without a job but also without a place to stay. Privatization of public housing was rapid and lacked any protective regulation leading to an increase in rents and housing maintenance costs and a steep decline of affordable housing (in the 1990s, the number of public rental units fell from 1.3 million to 200.000). This, together with the withdrawal of housing subsidies, resulted in many households being threatened by eviction and foreclosure.

Today, the number of people living under the subsistence minimum is estimated to be approximately 3.7 million, nearly 40% of the population (KSH, 2011; Ferge in Ónody-Molnár, 2012). According to recent estimates, the number of those who live in substandard and extremely overcrowded conditions is 1.5 million, around 15% of the total population. In 2005, 550.000 households had arrears in utilities, which can lead to eviction (Vitál, 2007). Since the beginning of the recent financial crisis in 2008, tens of thousands of people have been in danger of evictions because of their subprime mortgages. Due to an acute lack of proper statistics about effective homelessness it is difficult to tell exactly how many people sleep rough or live in homeless shelters. According to experts in the social services system, the number of those who live on the street and/or in shelters is at least 30.000 (Győri & Maróthy, 2008; Matalin, 2010).

In general, educational levels of homeless people are not significantly different than those of the general population, however many of them are trained in professions that became obsolete after the regime change and a large proportion of young homeless people have strikingly low qualifications (Győri & Maróthy, 2008, p.17). While the majority of the homeless are men between the ages of 38 and 44 (Győri & Maróthy, 2008, p.16), the number of women and children experiencing homelessness is on the rise (Janecskó, 2010). According to expert estimates, the proportion of homeless women has risen from 10% to 25-30% since the transition (Buzás & Hoffmann 2010). The groups most vulnerable to homelessness include young people growing up in foster care homes, the un- and underemployed, former prison inmates, people with mental health or substance abuse issues (Győri, 1995; Tosics, et al. 2003), and women suffering domestic violence (Buzás & Hoffmann 2010).

State responses to homelessness

Mass homelessness became visible to the general public in 1989-1990 when homeless people organized a series of sit-ins and protests to demand work and shelter. The protests got considerable publicity when a famous comedian joined the protesters and announced the foundation of a homeless people's party. Alarmed by these events, the government provided the protestors with empty military and state-owned buildings, which became the first official homeless shelters in Budapest after the Second World War.

Unfortunately, the Hungarian state's primary response to homelessness has not changed significantly since the 1990s: its main preoccupation has remained the development of homeless services that operate on the principle of emergency relief and crisis intervention. The main aim of homelessness policies, based on the relatively broad network of street social work, drop-in centers, overnight shelters, and temporary shelters, is not to prevent homelessness or secure permanent housing but to feed, clothe and temporarily shelter people in crisis.

While the sit-ins in 1989-1990 were followed mostly sympathetically by the general public, attitudes about homelessness shifted in the early 2000s. Without efficient policy responses, homelessness has been normalized as a natural part of the capitalist political economy, followed by increasing compassion fatigue (cf. Blau, 1992). So as a result, together with a growing disappointment with the regime change and the frustration generated by the difficulties faced by large masses of Hungarian society in making ends meet, average citizens have started to

exhibit more impatience and hostility towards homeless people. In public discourses, there has been a growing tendency to place the blame on homeless individuals for their situation rather than the failing economy or ineffective state responses. In tune with this shift in the moral attitudes towards homelessness and poverty in general, state authorities started to implement more punitive policies.

Exclusionary policies and practices that target street homeless people are not new. For decades, homeless people have been excluded from Budapest's public spaces through selective enforcement, urban design and sanitation work, among others, even before the transition. However, from the early 1990s to the early 2000s, exclusionary efforts were mostly ad hoc and far from systematic (Török & Udvarhelyi, 2006). In daily practices, authorities such as police officers and public space supervisors relied more on sheer force and selective enforcement (e.g. checking IDs multiple times, waking people up at night, removing homeless people's property based on hygienic ordinances etc.) than specifically anti-homeless legislation.

The targeting of street homeless people became more explicit in the mid-2000s when many local governments passed anti-begging laws and other ordinances to criminalize activities associated with homelessness. For example, in 2002 the mayor of Budapest started a program that aimed at "cleaning" the major underground passages of the city from graffiti, illegal vendors and homeless people (Unknown author, 2002, p. 23). This program was revitalized in December 2010, when Budapest's newly elected mayor ordered the police, public space supervisors and social workers to remove homeless people from major underground pedestrian passages that had provided shelter to hundreds of people every night. In 2009, the mayor of the 11th district of Budapest declared a number of homeless-free zones where homeless people would not be allowed to stay.

A major shift happened in the scale of the criminalization of homelessness in October 2010, when the Parliament passed a law that allowed local municipalities to ban living in public spaces. At the beginning of 2011, the Ministry of Interior was exploring legal ways to place homeless people in detention and the first homeless shelter with a special room for short-term arrests was opened in the fall of 2011. In November 2011, the Parliament passed a law that made living in public spaces a crime punishable by a fine or ultimately jail, making Hungary the only country in Europe where any form of rough sleeping is officially illegal. According to the Law on offenses, which came into effect in April 2012, the condition for applying a fine or jail for breaking this rule is that appropriate homeless services be provided by the state or the local government, even though no exact definition of "appropriate" was specified in the law.

Resistance against the criminalization of homelessness

There is a general assumption that homeless people seldom organize because of a lack of resources, social ties, political willingness and trust, among others. In fact, many organizations that advocate for the homeless are led by non-homeless activists and tend to focus on litigation and policy change (Hopper, 2003). At the same time, homeless and ill-housed people such as shack-dwellers all over the world take self-advocacy and indigenous leadership seriously and are involved in social movements to promote their social and economic rights by using direct action, mass organizing, lobbying, litigation and service provision.

In Hungary, traditions of organizing by the urban poor are weak. While there are historical examples of collective efforts to fight (housing) poverty, none of these have developed into a mass social movement. The first advocacy group that places emphasis on homeless leadership and the development of a mass base is The City is for All (AVM). Founded in 2009 by homeless and formerly homeless activists and their allies, the group concentrates on three areas of action: housing rights, access to public spaces and advocacy in the area of homeless services. In the fall of 2010, when the plans to criminalize street homelessness became public, AVM launched a long-term campaign against the criminalization of homelessness on various levels, by various means.

First, the group held a demonstration in front of the Ministry of the Interior, which was responsible for the law that made it possible for local governments to ban "residential habitation in public spaces." At the same time, the group delivered a petition to the ministry signed by several hundred homeless citizens. In April 2011, the group disrupted

the meeting of the general assembly of the City of Budapest to resist the enactment of the first such local ban. In the summer of 2011, the group presented its objections to the MPs in two different committee meetings of the Hungarian Parliament where the proposal to amend the Law on Offenses to make homelessness illegal was on the table.

In the fall of 2011, the group sent an open letter signed by more than 1000 people to all Members of Parliament protesting the amendment of the Law on Offenses. Then, in September 2011, the 8th district of Budapest started a massive anti-homeless campaign. The local mayor, Máté Kocsis set up a special police unit to seek people breaching public space regulations as well as a short-term arrest office, where homeless people were arrested on more than 500 occasions within a period of 3 weeks for such violations as public urination, begging, rummaging through garbage and residing in public space. As a response, AVM organized a 24-hour advocacy vigil in front of the short-term arrest office, where many passers-by demonstrated their disagreement with the criminalization of homelessness. In October 2011, the group organized a large demonstration in front of the Parliament where hundreds of people protested against the imprisonment of homeless people.

On 11 November 2011 the group held a demonstration in front of the municipality of Budapest's 8th district demanding that Kocsis, who is also one of the MPs to have proposed the penalization of homelessness, repeal the proposal. During the demonstration, the protestors symbolically turned Kocsis's office into a prison and sent their message to the mayor through his office window: "we are human beings". After the performance, several members of the group took part in a sit-in at the mayor's office where participants continued to demand the repeal of the anti-homeless proposal. In the end, around 30 protestors were subjected to short-term arrest at the local police precinct. Later, the judge found them guilty of resisting lawful police action but most of them were let go with a warning as their act was deemed not dangerous to society. Despite the efforts of AVM and their allies, the law that makes homelessness illegal is still in effect and the group continues to fight for real solutions to homelessness such as comprehensive national and local housing policy, an efficient shelter system and a respect for the rights of every citizen regardless of their social status.

Overall, the mainstreaming of anti-homeless rhetoric and practice in Hungary is part of a larger trend to regulate and discipline those on the margins of society and demonstrate political power and efficacy. To name but a few of the recent examples of criminalizing poverty, detention centers have been set up to lock up undocumented migrants and asylum-seekers; Roma people are stopped and searched disproportionately and fined or eventually imprisoned on a daily basis for such "crimes" as collecting wood for heating or riding a bicycle without a bell or front and back lights; and families may now be jailed if their children skip school too many times. It seems that the systematic efforts to exclude, contain, and criminalize poor people in general and homeless people in particular is the Hungarian state's response to its prolonged crisis of legitimacy and an attempt to consolidate its role in the neoliberal regime.

Please refer to www.feantsa.org for the full bibliography for this article.

Case law update

The case of *Buckland* v. *The United Kingdom*

Application no. 15729/07
Decided on 18 September 2012

Relevant Articles: 8 (right to private and family life)

At issue in this case is a challenge to a local eviction procedure when the eviction occurs on a caravan site. Specifically, the European Court of Human Rights addressed first whether the possibility of suspending an eviction was in itself a sufficient legal protection against interferences with a person's right to a home under Article 8. According to the Courts' jurisprudence, interfering with an individual's right to housing must be "necessary in a democratic society." Ultimately the Court found that an individual must have the right to overturn an eviction order if the eviction procedure is considered to be necessary in a democratic society. The fact that procedural rules for evictions allowed Ms. Buckland only to suspend her eviction therefore constituted an Article 8 violation.

The foundation to the Court's reasoning in Traveller's cases refers to the case below: Connors v the United Kingdom.

The case of *Connors* v. *the United Kingdom*

Application no. 66746/01
Decided 27 August 2004

Articles concerned: 8 (right to privacy and family life)
Protocols concerned: 1 (right to property)

Connors is a foundation case for the European Court of Human Rights' jurisprudence on housing rights for travelers. In this case, the Court established that states enjoy a wide margin of appreciation in terms of how they manage housing. This means that the Court will respect how states attribute and manage housing so long as a state's decision is not "manifestly without reasonable foundation." In other words, the Court is signaling that it is unwilling to intervene in housing disputes between individuals and states. This reasoning only applies, however, to claims under Protocol 1 (right to property) of the European Convention of Human Rights. So while the Court in *Connors* appeared unlikely to enforce a housing right under Protocol 1, it also looked at Mr. Connors' situation under Article 8 (the right to privacy and to family life), which examines the specific circumstances of a case in relation to national legislation. Mr. Connors had been evicted from a development plot in a caravan site due to the nuisance Mr. Connors' guests had occasionally caused. There were evidently factual disputes, in the Court's view, over who caused this nuisance and whether or not the legislation made it clear that Mr. Connors should have been responsible for his guest's behavior. In light of these disputes, and given that fact that by carrying out an eviction order, the State would make Mr. Connors and his family homeless, the Court determined that the State's administrative process did not provide the kind of legal protections required under Article 8. Specifically, the Court held that "the power to evict without the burden of giving reasons liable to be examined as to their merits by an independent tribunal has not been convincingly shown to respond to any specific goal or to provide any specific benefit to members of the gypsy community" (¶ 92).

The case of *Bjedov* v. *Croatia*

Application no. 42150/09
Decided 29 May 2012

Articles concerned: 8 (right to property)

Here is another recent case handed down from the ECtHR that explains the conditions under which the right to housing under Article 8 is superior to a State's "margin of appreciation" in housing matters: while States enjoy a wide margin of appreciation in housing matters, this margin does not include the legal procedures that a state uses to enforce housing law. In *Bjedov,* the Court gives a succinct summary of this principle: "in circumstances where the national authorities, in their decisions ordering and upholding the applicant's eviction, have not given any explanation or put forward any arguments demonstrating that the applicant's eviction was necessary, the State's legitimate interest in being able to control its property comes second to the applicant's right to respect for her home" (¶ 70). In other words, the Court considers the "right" to housing to be primarily a procedural right, or the right to be heard before a local court on housing matters.

The case of *Trapani Lomardo and Others* v. *Italy*

Application no. 25106/03
Decision on 9 October 2012

Protocol concerned: 1 (right to property except in cases of public good)

This is a housing case from 2006, which we are including in this report because in October of this year, the Court ruled on the amount of damages owed to the complainants. Originally, the case in 2006 concerned the right to challenge a state order to erect a public building, in this case a school, on private land. Such an order is considered by the Court to be an "indirect eviction." In the Court's view, because the land's owners were not officially notified of their eviction, the eviction notice was "unforeseeable" and therefore illegal under Protocol 1. In other words, even if an indirect eviction is made in the interest of the public good, if those facing eviction are not notified, they may be eligible for compensation (but not return of the illegally appropriated land). In the October decision, the Court's ruling touched on how to value property targeted by an unlawful eviction. According to the Court, this value is equal to cost of the property at the moment of the eviction in addition to the cost of "lost chances" since the eviction, as well as moral damage.

The case of *Vojtechova* v. *Slovakia*

Application no. 59102/08
Decided on 25 September 2012

Articles concerned: 6 (right to a fair trial)

At issue in this case was the extent to which state courts should take into account the material need of tenants during eviction hearings. In Slovakia, the State's Civil Code requires local courts to assess the material needs of tenants during eviction hearings, and the fact that these needs were not taken into account, according to the Court, constitutes a violation of Ms. Vojtechova's Article 6 rights to a fair trial.

The case of *Globa* v. *Ukraine*

Application no. 15729/07, filed 20 March 2007
Decided on 5 July 2012

Article concerned: 6 (due process), 8 (right to property)

Globa is another case linking the right to housing to the Court's jurisprudence concerning fair trials: delaying enforcement of a ruling that would return possession of a "home" to its owner may constitute a violation of an individual's right to due process and her right to a home. Like *Vojtechova*, the ECtHR in *Globa* found that Mr. Globa's due process rights were violated, the ECtHR realized that since 1995, Mr. Globa's local council had delayed attributing public housing to him despite his eligibility. Unlike *Vojtechova*, however, the ECtHR did not find that Mr. Globa's eligibility constituted an enforceable right to a "home" under Article 8. The right to a future home is not protected under Article 8: "the applicant had never taken occupation of the apartment, never lived there for any period of time and had not moved her belongings there, whereas the current occupant had been the only one who had established his home there, albeit allegedly without a lawful right to do so" (¶ 38).

The case of *Petkova and Others* v. *Bulgaria*

Application nos. 19130/04, 17694/05 and 27777/06
Decided 25 September 2012

Articles concerned: Protocol 1 (right to property)

In this case the Court determined that delaying restitution or compensation to property owners in land disputes amounts to a violation of the right to property under Protocol 1. All the complainants in this case held titles to agricultural land that had become collectivized in 1945. Although the state had recognized each complainant's right to receive compensation or restitution for their land that had been lost to collectivization, the delay during which the state enforced this right reached a point where the Court considered the delay to be unreasonable and therefore equal to a deprivation of property.

The case of *Antonyan* v. *Armenia*

Application no. 3946/05
Decided 2 October 2012

Articles concerned: Protocol 1 (right to property)

A "cause of considerable annoyance" was considered in this case to amount to the deprivation of the right to property under Protocol 1. Ms. Antonyan had agreed, in 1981, to allow her niece and her niece's children to occupy an apartment belonging to Ms. Antonyan. At that time, Ms. Antonyan's apartment was public property, under the Soviet regime, although the apartment returned to Ms. Antonyan as a private good in 1993. Even though Ms. Antonyan was the owner of the apartment, eventually she was required to pay her niece's children compensation before terminating their right to occupy the apartment. We will remember that in 2008, FEANTSA successfully argued a collective complaint against Slovenia that also took up property rights in post-Soviet countries. Ultimately, the Court's decision in this case rested on the faulty legal procedures used by the Armenian state to handle Ms. Antonyan's application to evict her niece's children: specifically, the Court found that at no point had the state demonstrated, before local courts, that Ms. Antonyan's niece's children had a right to the apartment, which may be secured only through "written agreement with the property owner," according to the Court.

The case of *Bjelajac* v. *Serbia*

Application no. 6282/06
Decided 18 September, 2012

Articles concerned: Protocol 1 (protection of property)

Not repairing an individual's home may violate his or her Protocol 1 right to enjoy possessions. We have already seen in *Globa* and *Petkova* that the ECtHR will not allow States to delay for an unreasonable amount of time the attribution of housing or just compensation to property owners. *Bjelajac* extends this principle to unreasonable delays in carrying out court-ordered repairs on an individual's home.

A separate issue that appeared in *Bjelajac* touched on the rights of tenant unions to pass rules governing the use of public areas in multi-unit buildings. Rules that constrain, albeit it minimally, use of common spaces by tenant union members does not violate an individual's Protocol 1 rights, according to the Court.

Case C-489/10 in the matter of criminal proceedings against Lukasz Marcin Bonda

Court of Justice of the European Union Decided 5 June, 2012

Articles concerned: Chapter IV ("Justice") of the European Charter of Fundamental Rights (48: presumption of innocence, 49: right to a fair trial, 50: protection against double jeopardy)

This is a complex case from the Court of Justice of the European Union that originated in an economic dispute between a farmer, Mr. Bonda, and the provider of an agricultural subsidy in his home state of Poland. The Court of Justice of the European Union's decision, however, impacts how European Courts understand the penalization of the homeless and socially marginal groups. *Bonda* draws a line between administrative sanctions and criminal penalties. For the Court of Justice of the European Union, an administrative type sanction that applies to the general public must be considered to be criminal in character. Because the sanction imposed on Mr. Bonda would only apply to individuals who applied to the agricultural aid scheme, the Court of Justice of the European Union determined it was not criminal in nature and therefore, Mr. Bonda was not entitled to protection under Chapter IV of the Charter of Fundamental Rights of the European Union.

One of the most important outcomes of this decision is procedural: *Bonda* shows us that the Court of Justice of the European Union has adopted the entirety of the European Court of Human Rights' jurisprudence regarding administrative sanctions.

Recently published, events, news

Conference

Brussels, Belgium
25 January 2013

Co-hosted by the University of Antwerp, Faculties Saint-Louis (Brussels) and the Service for Combatting Poverty and Social Exclusion.

Topic: The right to housing: moving towards the obligation to produce results in Belgium

This conference brings together European experts (including HRW's Padraic Kenna, and Nicolas Bernard, and FEANTSA AC member, Robert Aldridge) and Belgian experts and policy makers. Participants will look at the Scottish and French examples, to explore how to strengthen the right to housing in Belgium.

Contact Angela van de Wiel for more information: Angela.vandeWiel@cntr.be

Recent publications

Cheating Welfare: Public Assistance and the Criminalization of Poverty

Kaaryn S. Gustafson
Publication date: 23 July 2012

Over the last three decades, welfare policies have been informed by popular beliefs that welfare fraud is rampant. As a result, welfare policies have become more punitive and the boundaries between the welfare system and the criminal justice system have blurred--so much so that in some locales prosecution caseloads for welfare fraud exceed welfare caseloads. In reality, some recipients manipulate the welfare system for their own ends, others are gravely hurt by punitive policies, and still others fall somewhere in between.

In Cheating Welfare, Kaaryn S. Gustafson endeavors to clear up these gray areas by providing insights into the history, social construction, and lived experience of welfare. She shows why cheating is all but inevitable--not because poor people are immoral, but because ordinary individuals navigating complex systems of rules are likely to become entangled despite their best efforts. Through an examination of the construction of the crime we know as welfare fraud, which she bases on in-depth interviews with welfare recipients in Northern California, Gustafson challenges readers to question their assumptions about welfare policies, welfare recipients, and crime control in the United States.

How people face evictions

Yves Cabannes, Silvia Guimarães Yafai and Cassidy Johnson
Publication date: 5 November 2011

Forced and market-driven evictions are increasing dramatically worldwide, with devastating effects on millions of children, women and men across the globe. Despite this negative trend, however, many people-led initiatives have been successful in addressing this issue and reducing the number of evictions, developing new policies and proving that alternatives to forced eviction can be found.

Available online: http://www.bartlett.ucl.ac.uk/dpu/latest/publications/dpu-books/How_people_face_evictions.pdf

Book review

Book review: *Banished: the New Social Control in Urban America* Oxford Press (2009) by Katherine Beckett and Steve Herbert. 207p with bibliography and index. *Available in English*

Beckett and Herbert's goal in *Banished* is to provide a textbook style study of the repression of petty offenses through administrative sanctions, especially exclusionary orders. Their study focuses on the city of Seattle, WA, where police officers have the power to issue temporary bans to people who violate rules in public parks and on public transit property. The text explains the legal, political and social impacts of administrative sanctions while remaining easy to follow: *Banished* turns out to be as much a textbook as a manual for anyone who wants to challenge these types of sanctions.

What stands out is not only the disproportionate impact of bans on socially marginalized populations, especially the homeless, but also the fact that administrative sanctioning is replacing non-penal approaches to social problems. Herbert and Beckett write that "a third of all encounters between police officers and suspects identified as homeless begin with the investigation of an alleged trespass violation [...] in the absence of adequate low-income housing, shelter beds, drug and alcohol treatment programs, and inpatient health care facilities [...] it is understandable that officers use banishment to try to 'make the problem go away'" (83). Europeans concerned about the penalization of homelessness should be interested in the case of Seattle, a city known for its dubious innovations in penal sanctions. As the US often leads Europe towards adopting more restrictive penal policies, and as Seattle often leads the US by adopting some of the harshest penal tactics that target the homeless, European readers who read *Banished* will have a better understanding of the direction European policies might head in the future.

Seminar report

Jurislogement – seminar on evictions of people occupying land without permission

On 5 October 2012, Jurislogement, a national network of lawyers, activists and associations working on housing issues in France, held a seminar for its own members, as well as judges, academics, and others to learn about and exchange practices about how to deal with the evictions of people occupying land on which they do not have permission to stay – which in some cases is trespassing. The number of evictions from slums, camping sites and squats has increased over the past months and organizations do not have enough resources to properly defend the rights of the people affected. The exchange was real and useful: participants working in organizations supporting people who had been evicted asked the lawyers present for ideas on how to argue their cases. In turn, some of the lawyers present offered advice on how to navigate the procedures and also revealed how the same law can be applied very differently in different parts of the country – in this case, Lyon and Paris.

Nicolas Bernard, a professor at Saint Louis University, joined the seminar from Brussels and talked about the added value of using jurisprudence from the European courts to strengthen legal arguments at local level. For example, the European Court of Human Rights, in its decision on 2 December 2010 in the Confinco vs France case[1], confirmed the refusal by the French government to allow the police to carry out forced evictions of people who are squatting.

Bernard also cited the collective complaints against France by ATD Quart Monde (ATD Forth World) and by FEANTSA, which saw the Council of Europe's European Committee of Social Rights condemn France in December 2007 for violating the right to housing. The decision highlighted the lack of decent housing, the failure to prevent evictions and discrimination faced by immigrants and travelers when seeking accommodation[2].

Nicolas Bernard also used the Mc Cann v. United Kingdom decision on 13 May 2008, to illustrate how the European Court of Human Rights, ruled for the first time that a State is required to ensure that there is a court decision before an eviction is carried out. This ruling demonstrates the increasing importance of procedural guarantees in the jurisprudence coming out the Court in Strasbourg[3].

Jurislogement will continue this discussion over the next months, through its discussion group and possibly other events and hopes that lawyers, judges and legal practionners will assist in the goal of trying to improve the conditions for people living in these difficult circumstances.

For more information, visit: www.jurislogement.org

1 Nicolas Bernard, «Refuser l'expulsion du logement au nom de l'ordre public : pour les squatteurs aussi? - CEDH,Société Confinco c. France, 12 octobre 2010», Revue trimestrielle des droits de l'Homme, 86/2011, p.395

2 Nicolas Bernard, «Le droit au logement dans la Charte sociale révisée : à propos de la condamnation de la France par le Comité européen des droits sociaux - ATD Quart Monde c. France et FEANTSA c. France, 5 décembre 2007», Revue trimestrielle des droits de l'Homme, 80/2009, p.1061

3 Nicolas Bernard, «Pas d'expulsion de logement sans contrôle juridictionnel - CEDH, McCann c. Royaume-Uni, 13 mai 2008», Revue trimestrielle des droits de l'Homme, 78/2009, p.527

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- promoting policy transfer, learning and support among Member States on EU objectives and priorities; and
- relaying the views of the stakeholders and society at large.

For more information see: http://ec.europa.eu/employment_social/progress/index_en.html

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