

Housing Rights Watch Thematic Meeting:

“Protecting Vulnerable tenants in the private rental sector: the role of European and International law to prevent homelessness”

On 15 November 2019, Housing Rights Watch held a thematic meeting about the private rental sector in Europe and the role European and international legal instruments can play in defending tenants.

Gathered in the same room were some of the foremost experts on this issue from all over Europe.

The main topics covered in this meeting were the use of proportionality assessments, evictions as a cause of homelessness, and country-specific updates from several European Countries, with special focus in the afternoon on Central and Eastern Europe. The following summary will provide a run through of the main points and key takeaways from each topic and presentation.

Proportionality Assessments

Juan Carlos Benito, who is currently undertaking his PhD research at the Université Catholique de Louvain (UCL), presented his case for the need for private rental sector tenants to be able to raise proportionality defenses from a right to housing perspective. Part of Juan Carlos’ research explores where tenants have the right to raise a proportionality defense under European Human Rights Law.

Mr. Benito presented a compared study on the evolution of the caselaw of the ECHR in the light of Art. 8 of the Convention. The ECHR has held that “any person at risk of losing one’s home, should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8”.

He explained the 4 main cases of the ECHR in which the Court found violations of the Convention resulting from forced evictions of Roma or Travellers: *Connors* (2004) *Yordanova* (2012), *Winterstein* (2013), *Bagdonavicius* (2016)

Mr Benito showed that the jurisprudence of the ECHR, has evolved into restrictive interpretation of tenant rights in Europe. In [McCann](#), the ECHR held that the existence of (national) legislation should not prevent a tenant from raising a proportionality defense when possession of their home was being sought (Public sector tenants). Both courts, the national and the ECHR stated that their reasoning was not meant to apply to the private rented sector—where the landlord is a private individual or a company. In the recent [F.J.M. v. the United Kingdom](#) however, the demand was declared non-admissible. The applicant had been evicted following a possession order made by a court but was not allowed to raise a defense on proportionality grounds. The author claimed that the possession order was disproportionate in her case and that she should have been able to require the court to make a proportionality assessment before granting possession and evicting her. This case concerned no-fault evictions in the UK. (No proportionality defense for private sector tenants)

There seems to be divergent interpretations under European human rights law and international human rights law. The Committee on Economic, Social and Cultural Rights has a more progressist view in relation to proportionality. Although the expert body it’s not a court, the two last decisions against Spain regarding the proportionality of evictions in the private rented sector, *Ben Djazia* (2017) and *López Albán* (2019), could be used to protect tenants’ rights in the private sector. Another question is to what extent these CESCR decisions are binding in Spain.

Dr Padraic Kenna from NUI Galway reported on recent progress in relation to the proportionality assessment in Ireland. He stressed the importance of moving past the circular argument that proportionality does not apply in the private sector and noted that the task ahead is to get proportionality into mortgage evictions.

Ireland is still going through the echoes of the financial crash. There has been a huge amount of home loans; 30,000 households are in “doom loops” where they can’t pay back the mortgage arrears and the court won’t write it off. This was even condemned in the EU semester report. A recent legal development is the 2017, the Land and Conveyancing Law Reform (Amendment) (LCLRAA) originally introduced as ‘Keeping People in their Homes’ Bill, which includes a list of factors for courts to consider when applying the proportionality assessment on mortgage evictions.

Dr Kenna reminded the participants that EU law on consumer contracts such as the Directive 93/13/EEC on unfair terms in consumer contracts applies to mortgages and highlighted two articles of particular interest (articles 3 and 4). Dr. Kenna explained a significant case *C-34/13 Kusionova v SMART Capital [2014]* where the Unfair Contract Terms Directive had to be interpreted through the EU Charter – creating horizontal rights:

Para 65. Under EU law, the right to accommodation is a fundamental right guaranteed under Article 7 of the Charter that the referring court must take into consideration when implementing Directive 93/13.

Dr. Kenna also presented the Open Society [Abusive Lending Project](#), an initiative that seeks to apply EU consumer and human rights in Ireland.

Rental Evictions as a cause of homelessness & ways of protecting tenants: the cases of UK, Spain, Italy and Belgium

Mark Jordan from the University of Southampton Law School gave an overview of private rental sector developments in the UK since the 1980s. The 1988 Housing Act was the last act implemented under the Thatcher government which gave tenants extremely limited protection against evictions, for example a 2-month no reason eviction notice and no rent control. It also introduced Buy to Let mortgages, allowing landlords to buy more cheaply than prospective homeowners. Since then, the private rental sector has doubled in size because of a collapse in social housing and affordable homeownership. Today, more people are renting than ever before (1/3 families are in rented accommodation). The main route into homelessness in the UK is through the ending of private sector tenancy.

Mark Jordan introduced two routes of dealing with this problem: litigation and activism. The route to tackling no-fault evictions through litigation is somewhat closed, because although the European Social Charter and UN Rights have both been adopted into UK law, but the UK has not ratified the additional protocol to the European Social Charter providing for a system of collective complaints. While there are some green shoots using equality and non-Discrimination Claims to Advance Economic and Social Rights these have not yet proceeded into the higher courts.

As for activism, Dr. Jordan made the point that in the context of devolution in the UK, the Scottish parliament, Welsh government and the Northern Irish national assembly have the power to reform housing law policy. This could potentially carve out a space for activists to work in. For example, in 2010

Scotland held a consultation on the state of the law in the PRS (e.g. no-fault evictions). There was a limited response and a large presence of the Private Landlords Association. Another consultation was held 2-3 years later. By this point, tenants had begun to organise (e.g. the Living Rent campaign) and there were an unexpected 200,000 responses. Eventually there was a 3rd consultation with 800,000 responses. Reform was unavoidable, and the result was the Private Residences Tenancies Act – including an end to no-fault evictions and increased rent control.

In conclusion, the current potential for litigation in the UK is not promising but there is great potential for activism to influence law and policy. Scotland has embarrassed England, who argued loss of no-fault evictions would cause the sky to fall but Scotland has shown otherwise. Before Theresa May resigned, she proposed to end no-fault evictions, ‘to deter the unethical behavior of landlords.’ Whether this proposal will be implemented under Boris Johnson remains to be seen.

Sonia Olea from the Advocacy team of Caritas Spain examined recent decisions of the Committee on Economic, Social and Cultural Rights on housing and its effects on the Spanish legal system. In four years, there have been three decisions from the UN CESCR in 2015, 2017 and 2019, out of 110 communications. In all three cases Spain was considered to be in violation of its obligations under international law:

- [I.D.G v. Spain \(Communication No. 2/2014\) \[17.06.2015\]](#)^t was on mortgage repossession. The mortgage law changed.
- [M.B.D. and others v. Spain \(Communication No. 5/2015\) \[5.07.2017\]](#) was on private rental evictions of a family with children concluding in an individual recommendation and a general recommendation for public policy resulting in a change of law/policy.
- [López Albán v. Spain \(Communication No. 37/2018\) \[11.10.2019\]](#) was on an illegally occupied house. The CESCR found that Spain had violated the right to housing since the eviction had been carried out without ensuring adequate alternative accommodation and without a prior proportionality assessment.

There are many organisations in Spain doing advocacy work in this field, but Ms Olea points out that despite legal developments the fact remains that only 1.3% of housing is social housing and the rest is private. Therefore, in a situation of eviction, Social Services are not able to offer an alternative accommodation because of lack of social housing. Paying for a room in a hostel has been sometimes a helpful solution but cannot become a long-term solution. In Ms Olea’s own town of 200,000 inhabitants there are only 20 social flats. This shows laws may exist but without any actual provision of social housing, nothing changes. The real problem is the financialisation of housing; in Spain there are 3,5 million empty housing.

Promoting the right to housing using national instruments is difficult: the closing sentence in a Constitutional Court paragraph on housing law states explicitly that there is no human right to housing in the Spanish Constitution – just a public policy principle and the government is only obliged to dedicate resources to pursue this objective. This is the reason why Spanish activists and lawyers have decided to use European and International instruments.

Read more on this on our website by Ms. Olea: [A recent decision by the UN CESCR committee deems Spain in violation of the right to adequate housing for the third time](#)

Nicolas Bernard from the University of Saint-Louis in Brussels presented two recent cases – one interim measure issued by UN CESCR and a decision by a national judge. In the first case, an eviction was issued with no reason but with compensation. An old man filed a complaint to the UN CESCR. He requested immediate temporary suspension of the eviction. Three days later the committee acceded and asked Belgium to avoid possible irreparable damage to the victim. This communication is still pending a decision by the Committee.

The second case concerned rent levels in Brussels. The justice of peace in St Gilles wrote that a landlord had to repay a tenant several thousand euros for having charged excessively high rent for a lease signed six years before the date of ruling (January 2019). Brussels has a rent index, but it is for informational purposes and is non-binding. Furthermore, it was only published one year ago. So how was the decision reached? Article 3 of the Brussels Housing Code outlines the right to affordable housing. The judge decided to apply the article by applying the index to the tenants rent. It was not illogical for the judge to rule the rent invalid because it goes against public policy doctrine. The sanction is also logical, preferring partial annulment to complete annulment (partial as it just calls for repayment of rent, whereas complete would punish the tenant by depriving them of housing).

Professor Bernard expects that in the future, national authorities will start to listen more carefully to these injunctions.

Camilla Zamparini, Avvocato di Strada explained the situation of the private rental sector in Italy . An argument often used by the private rental sector is that it is difficult for landlords to put a house on the market because it is not safe enough to ensure they will receive rent. The market is rigid and difficult to enter. Italy has diversified its rental agreements in order for more people to be able to find a solution that works for them. There exist 1- and 3-month agreements that are predetermined. Because of this it is more difficult to have abusive rentals and more difficult for the state to look into housing regulation. There are more opportunities for both parties to enter the market. There are agreements for students and for foreigners with temporary jobs. The tenant can choose the most suitable agreement and landlords can add clauses which preview having the house back for the family. These predetermined agreements can include terms such as a lowered rent for a shorter eviction notice.

The local government can also provide subsidies to help a tenant remain in their house. This is done partly on the grounds that the social cost of a homeless person would be higher. In one eviction case in the northern region of Emilia-Romagna, a judge's response was to try to convince landlord that it is better to accept a government subsidy than to evict the tenant. Judges also ask for grounds for evictions and evidence to support these grounds, with economic sanctions if no justification is given/the given justification is not considered sufficient. This prevention system helps protect vulnerable tenants, especially families with children, the elderly or those with special needs.

Roundtable of national updates on main topics in the private rented sector in Central and Eastern Europe: Hungary, Slovenia, and Poland

Hungary (Henrietta Dietz, Street Lawyers)

Henrietta Dietz from Utcajogász, Street Lawyers in Hungary, a human rights NGO working to enforce the rights and interests of homeless people and people living in housing poverty. They are working not only in individual cases, but also for systemic changes to make the Hungarian housing situation more just and that everyone could have access to adequate housing. They fight so that legislation, official measures and institutions would not criminalize and discriminate. While solving cases that we are working together with the clients, to develop the legal awareness of the people concerned.

In Hungary housing is largely homeownership-dominated, its growth is connected to the increase in private rents, which pushed people to apply for bank credit to purchase homes. Henrietta reported that between 2 and 3 million, corresponding to 20-25% of the population, are experiencing housing poverty, and 1.5 million live in inadequate housing. 300 families were evicted last winter. There is an eviction moratorium between November 15 and April 30 each year, so that someone does not lose the roof over his head on the coldest nights. In her opinion, a moratorium will not solve housing problems until there is a national housing policy supported by budgetary resources and regulation. The moratorium is only a solution if people in need have access to social rented housing during this time.

Ms Dietz stressed the need for a Europe-wide rental cap, as otherwise off-shore trusts will just invest in another city elsewhere.

Slovenia (Milena Smit, Slovenia Tenants' Association)

Slovenia is going through its 3rd wave of privatization. Lack of housing supply is a problem, and there is very little social housing. The price of accommodation per m² has increased 18% in the last 2 years, and on average, buying a 50m² flat costs 9 and a half years' worth of income. Both the Berlin case of rent caps as well as the Vienna social housing are currently being debated and considered. At the political level, the housing minister shows awareness of the issue but needs more pressure from civil society. Ljubljana's new green mayor is promising but he also seems more interested in investing in and developing the tourism sector. The Ljubljana archdiocese has played a financially important role in relieving the housing situation. Where the government provided 21 million euro in funds for those unable to afford housing, the archdiocese gave 30 million euro.

Poland (Beata Siemieniako, Warsaw Tenants' Union)

The minimum wage in Poland is 375 euro net, which is equivalent to the average cost of a 1-bedroom flat in Warsaw or less. Of course, average wages are higher in Warsaw than in the rest for the country but for teachers and healthcare professionals for example, the cost of renting accommodation is disproportionate to their wage. In Poland, ownership is the most popular binding title to the flat, and home owners are better protected by the law in case of debt or other problems. Other reasons for the popularity of ownership is similar to that of Eastern Europe – a trend of privatization where many social houses were sold at a discount and ownership was raised to a high place in the value system. The public imagination venerates ownership, out of fear of a return to socialism. In addition to this, a 'delayed' restitution process means that nationalized properties are being reprivatized for reasons of 'historical

justice'. This of course is an excuse for huge transferal of properties from public to private ownership. It is a process which touches the most vulnerable tenants.

So, what are the risks for tenants in this private rental market? Technically tenants are protected by the law but there is a lack of consciousness of these rights among tenants and police, often resulting in illegal evictions. Slow court processes mean owners often employ illegal assistance to carry out evictions. There is no state institution to protect tenants before a professional attorney. There is nothing comparable to i.e. the Department of Building in NYC. The system protects tenants but those who live in the private sector are not aware of this. Apart from the lack of help, the lack of interim legal measures poses a risk to tenants.

In the last part of the meeting we discussed the **strengthening of the network** how we could better share progress on the right to housing. The office suggested the creation of a google group where we could exchange information among the members of the network.