

Instruments for Advocacy and Litigation on Housing Rights: How to move forward in the Polish context

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FEANTSA - Working together to end homelessness

Learning Outcomes

By the end of the Seminar, you will be able to:

- Debate the role of the homeless service organizations in empowering homeless people and in advocating for the rights of the homeless people.
- Get acquainted with different legal tools that have been useful in other contexts to defend housing rights
- Identify the circumstances in which homeless organizations may use advocacy or litigation to defend homeless people rights in Poland

FEANTSA: Human Rights-based Approach

- Homelessness: a situation that deprives individuals of human rights, including the right to housing.
 - Right to life, right to respect for private and family life...
- Housing Rights expert Group → Housing Rights Watch
- Promoting housing rights in Europe:
 - Disseminate knowledge about Housing Rights
 - Monitor Case-law
 - Support Strategic Litigation
 - Develop links with human rights organizations
 - Raise awareness about and fight criminalisation

The Rights-Based Approach to Housing

“The lived experience of homelessness and inadequate housing challenges the very core of what it means **to be human, assaulting dignity and threatening life itself**. It is these experiences that make homelessness and inadequate housing, violations of human rights and not merely programme failures.”

- Leilani Farha, UN Special Rapporteur on the Right to Adequate Housing (2018)

The Rights-Based Approach to Housing

Charity approach	Needs approach	Rights-based Approach
Individuals are seen as victims	Individuals are objects of development intervention	Individual and groups are empowered to claim their rights
Individuals deserve assistance	Individuals deserve assistance	Individuals are entitled to assistance
Focuses on appearance of problems	Focuses on immediate causes of problems	Focuses on structural causes and their appearances

Advocacy on Housing Rights

- Advocacy is an activity by an individual or group that aims to influence decisions within political, economic, and social systems and institutions.
- Advocacy can include many activities that a person or organization undertakes including media campaigns, public speaking, commissioning and publishing research.
- Advocacy on Housing rights: means speaking up for homeless people (broad concept), acting on their behalf to defend their right to be housed and/ or other rights

Strategic Litigation and Why it Matters

- A type of legal action used to single out cases to bring to court or to quasi-judicial bodies in order to achieve a specific goal
- Goal = positive, broader impact on law and policy development as well as setting a precedent for outcomes in similar cases
- The right to housing may not always be explicitly recognised but rather derived from other rights such as the right to an adequate standard of living
- State of right to housing = corpus of case law that has gradually come to define the legal norms related to the right to housing in Europe



Institutional Overview: what provisions for the right to housing in European and international law?

UN International Covenant on Economic, Social and Cultural Rights



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THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

- Article 2(1): *Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, **to the maximum of its available resources**, with a view to achieving progressively the full realization of the rights recognized in the present Covenant **by all appropriate means**, including particularly the adoption of legislative measures.*
- **Article 11(1)**: *The States Parties to the present Covenant recognize the right of everyone to **an adequate standard of living** for himself and his family, **including adequate food, clothing and housing**, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*

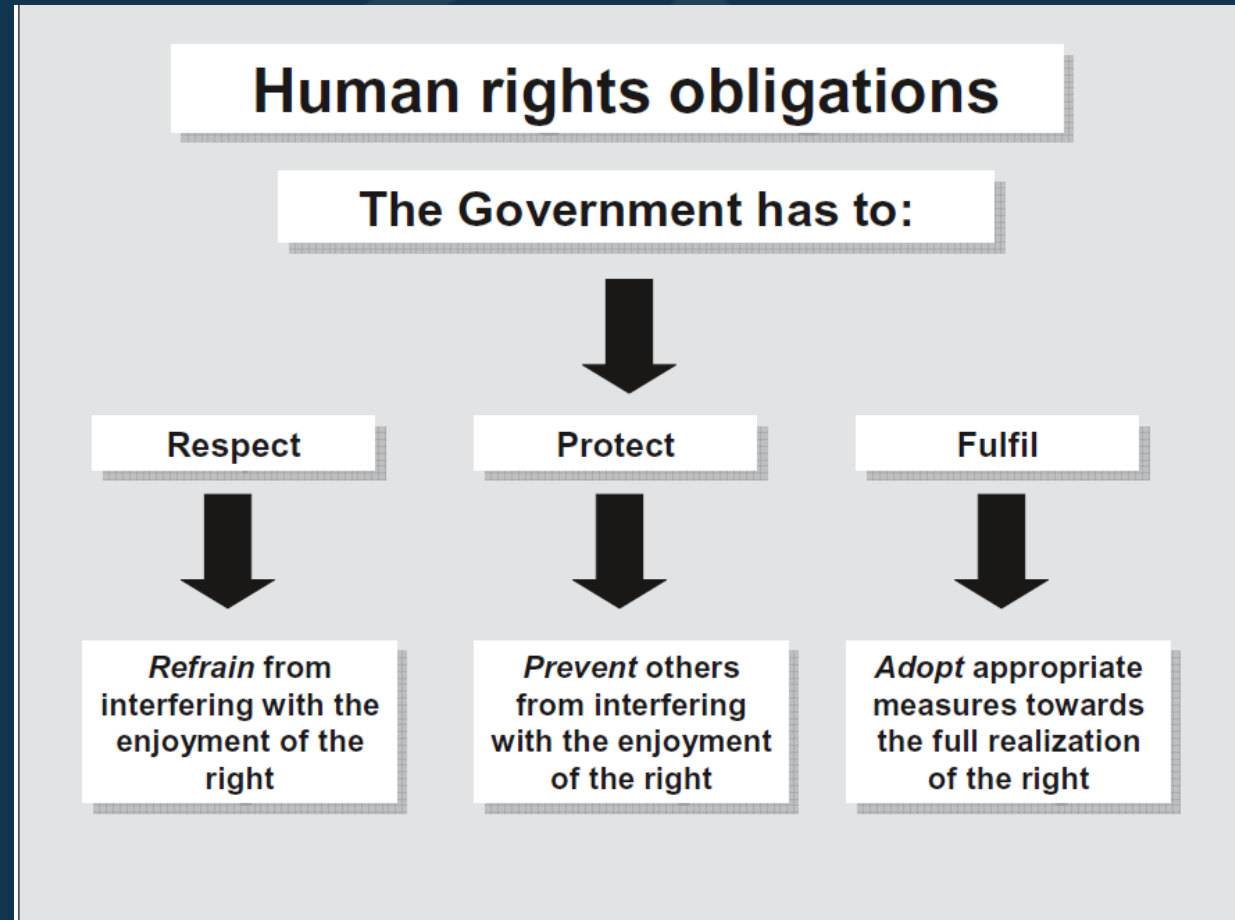
Are social rights, human rights too?

- Economic, social and cultural rights not different from civil and political rights
- Universal Declaration of Human Rights made no distinction:
 - The distinction appeared in the context of cold war tensions
 - The West greater emphasis on civil and political rights, the East highlighted the importance of economic, social and cultural rights.
 - The result was two separate Covenants
 - This strict separation has been abandoned
- Recently human rights treaties have integrated all rights.
 - Convention on the Rights of the Child or
 - the Convention on the Rights of Persons with Disabilities

Human rights: indivisible, interrelated & interdependent

- The enjoyment of all human rights is interlinked.
it is often harder for individuals who cannot read and write to find work, to take part in political activity or to exercise their freedom of expression.
- The improvement of one right facilitates advancement of the others
- The deprivation of one right adversely affects the others.

Respect, Protect and Fulfil



What is the progressive realization of social rights?

- The obligation to take **appropriate measures** towards the full realization of economic, social and cultural rights **to the maximum of their available resources**
- The realization of these rights can be hampered by a **lack of resources** and can be achieved over **a period of time**.
- It means that a State's compliance with its obligation to take appropriate measures is assessed in the light of the resources.

The Committee On Economic, Social And Cultural Rights (CESCR)

- Body of 18 independent experts
- Oversee States Parties' Implementation of the ICESCR
- Issue general comments: authoritative interpretations of ICESCR provisions
- Right to housing addressed in:
 - General Comment No. 4 – the 7 elements of adequate housing
 - General Comments No. 7 – forced evictions

ELEMENTS OF ADEQUATE HOUSING

LEGAL SECURITY OF TENURE	Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing ...
AVAILABILITY OF SERVICES, MATERIALS, FACILITIES AND INFRASTRUCTURE	An adequate house must contain certain <u>facilities essential for health, security, comfort and nutrition.</u>
AFFORDABILITY	Personal or household financial costs associated with housing should be at such a level that the <u>attainment and satisfaction of other basic needs are not threatened or compromised.</u>
HABITABILITY	Adequate housing must be habitable, in terms of providing the inhabitants with <u>adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors.</u>
ACCESSIBILITY	Adequate housing must be <u>accessible to those entitled to it.</u> Disadvantaged groups must be accorded full and sustainable access to adequate housing resources.
LOCATION	Adequate housing must be in a <u>location which allows access to employment options, health-care services, schools, childcare centres and other social facilities.</u>
CULTURAL ADEQUACY	The way housing is constructed, the building materials used and the policies supporting these must <u>appropriately enable the expression of cultural identity and diversity of housing.</u>



International Covenant on Economic, Social, and Cultural Rights

Interprets
(General Comments)



Monitors Compliance
(Concluding Observations)



UN Committee on Economic, Social, and Cultural Rights



Optional Protocol



States Parties
Submit Country Reports

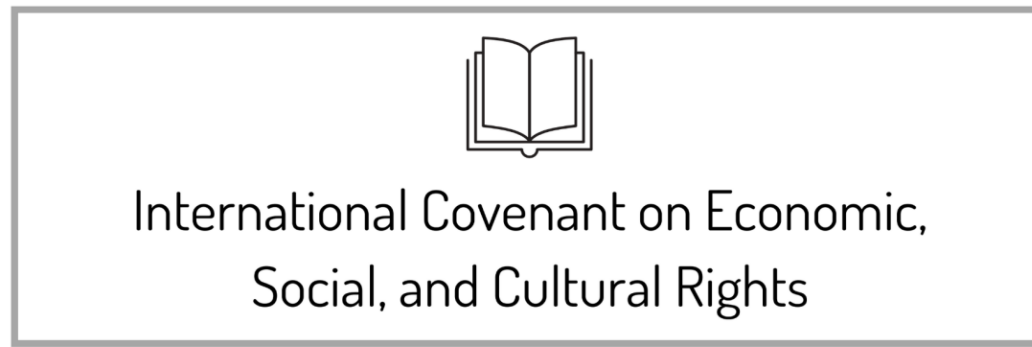


NGOs
Submit Shadow Reports



Individuals or Groups
May present a complaint in case
of violation of rights without
national remedy





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(General Comments)



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(Concluding Observations)



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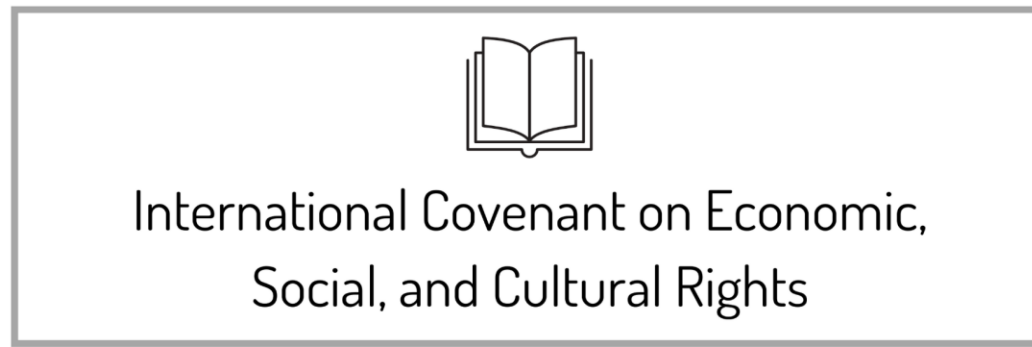


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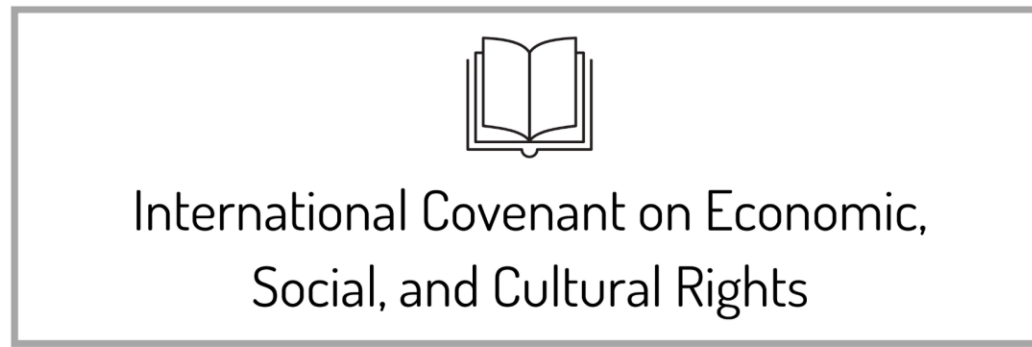


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ESCR Committee: Spain in violation of the Right to Housing



- I.D.G v. Spain [17.06.2015] on mortgage repossession. The mortgage law was changed.
- M.B.D. and others v. Spain [5.07.2017] was on private rental eviction 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 [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.

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

- **European Convention on Human Rights**
 - **European Social Charter**

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The European Convention on Human Rights

- Right to housing not explicitly included in European Convention on Human Rights (ECHR)
- But - enshrined in numerous concrete legal norms that are relevant in the fight against homelessness and housing exclusion:
 - the right to life (Article 2)
 - the prohibition of torture or inhuman or degrading treatment (Article 3)
 - the right to respect for private and family life (Article 8)
 - the prohibition of discrimination (Article 14)
 - the protection of property (Protocol 1)

The European Court of Human Rights (ECtHR), based in Strasbourg, makes sure that States Parties respect the rights guaranteed by the European Convention on Human Rights. The Court examines complaints lodged by individuals and States, and its judgements are binding.

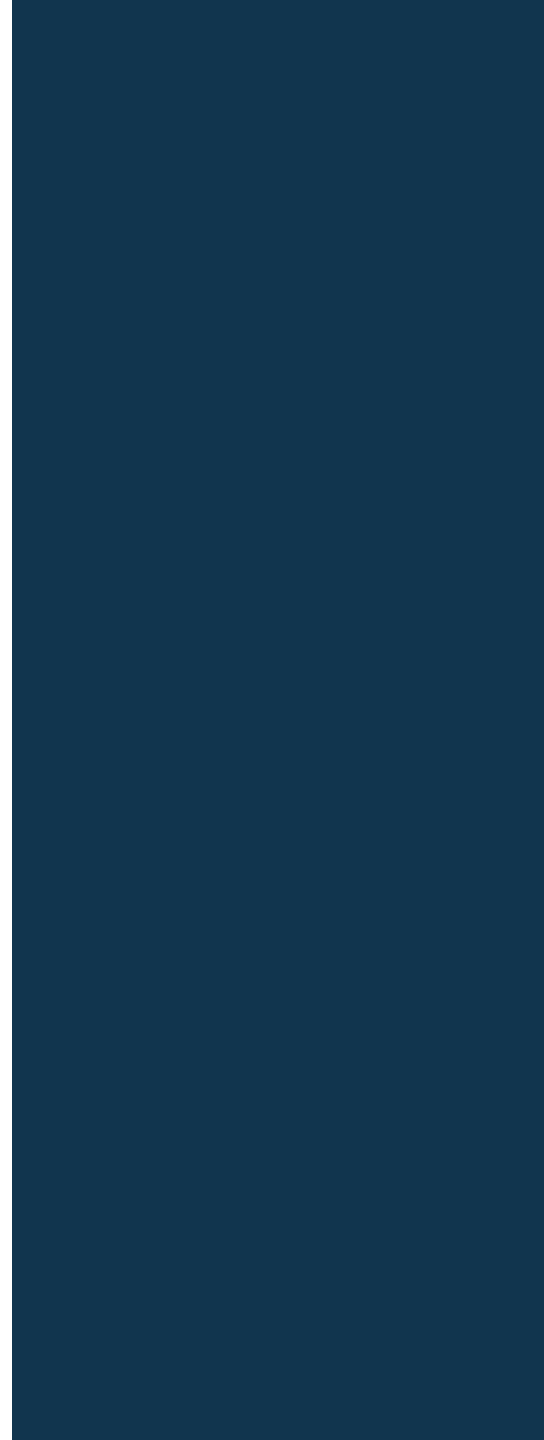
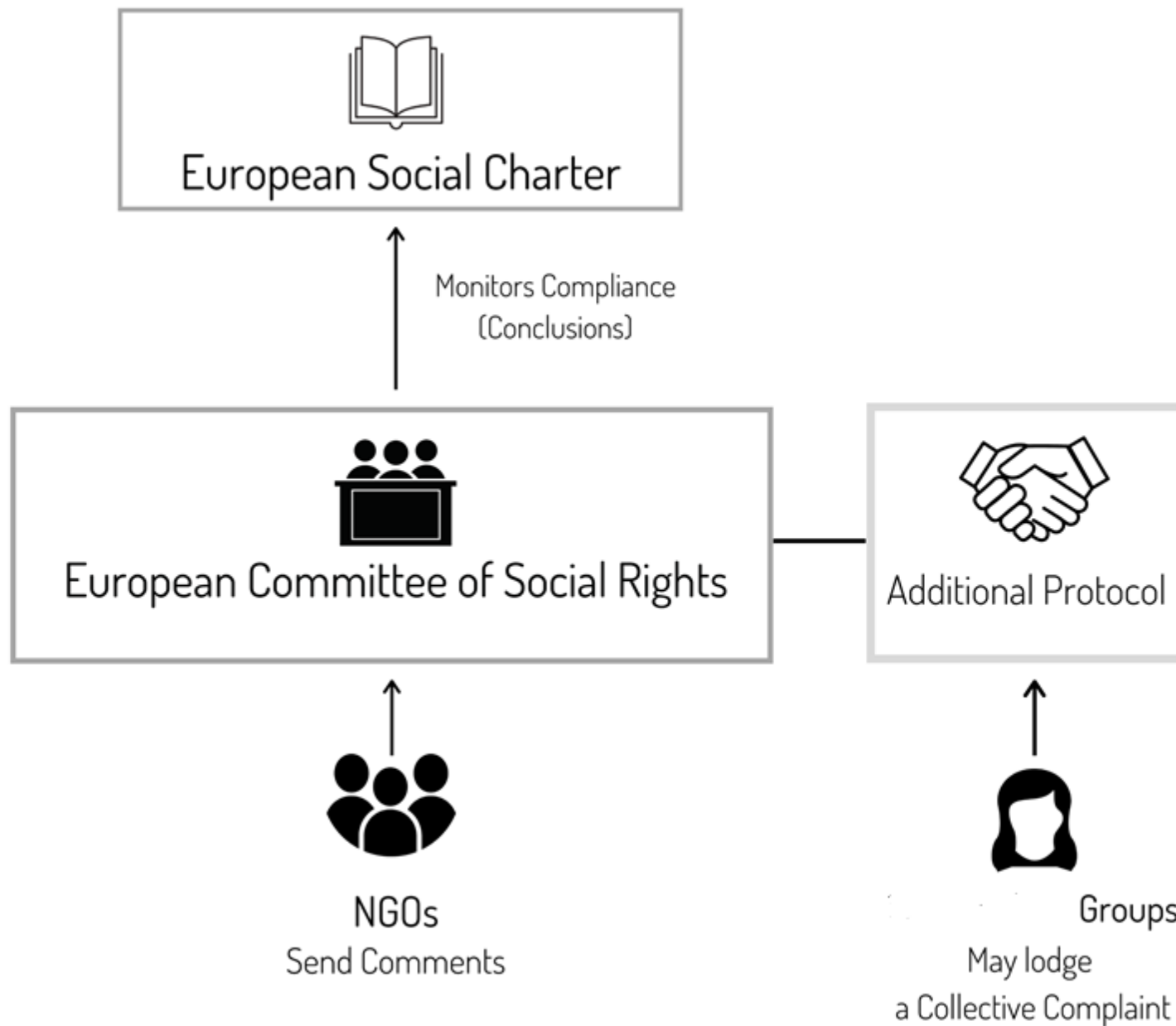
The European Social Charter

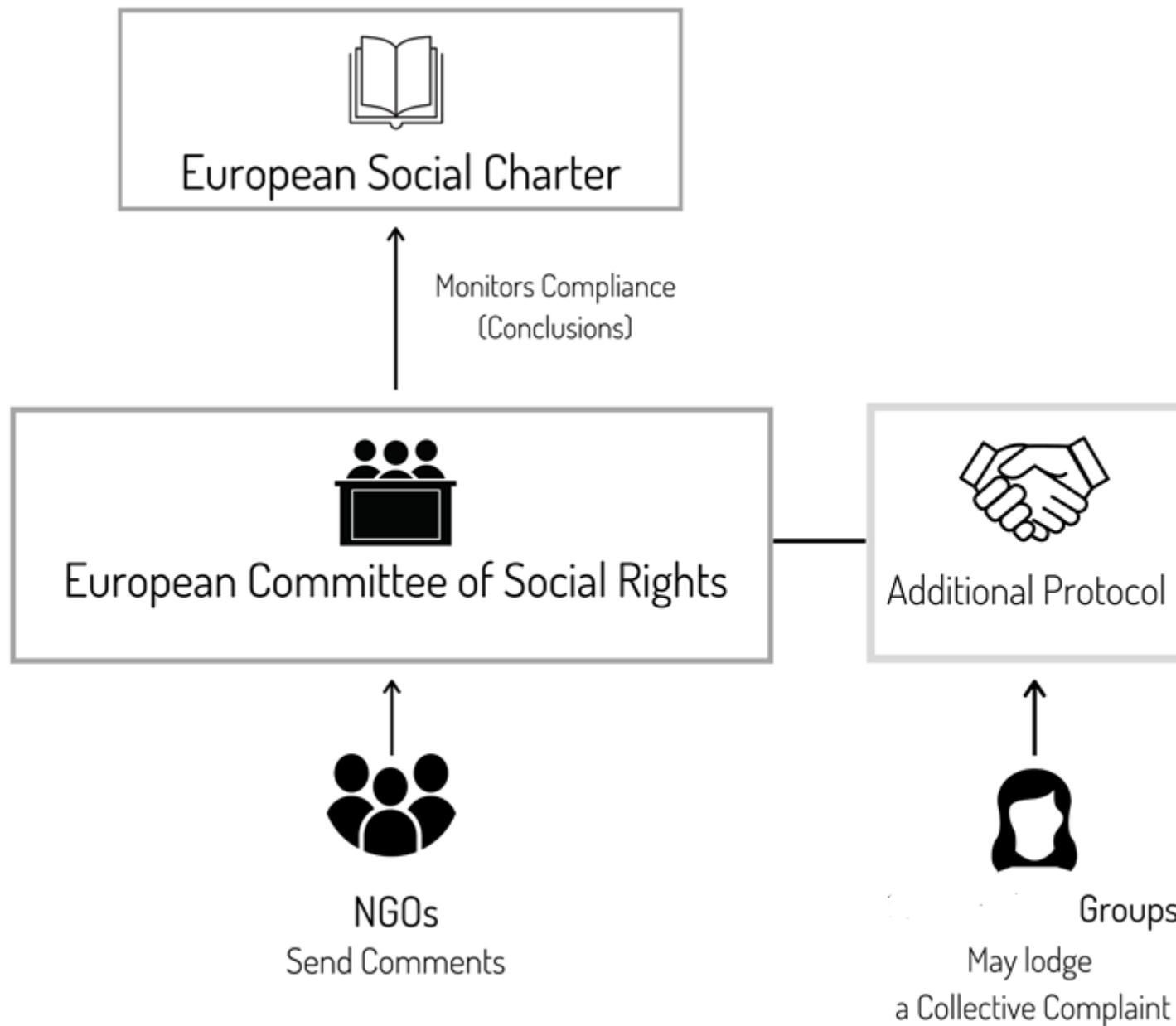
- **Article 31:** With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

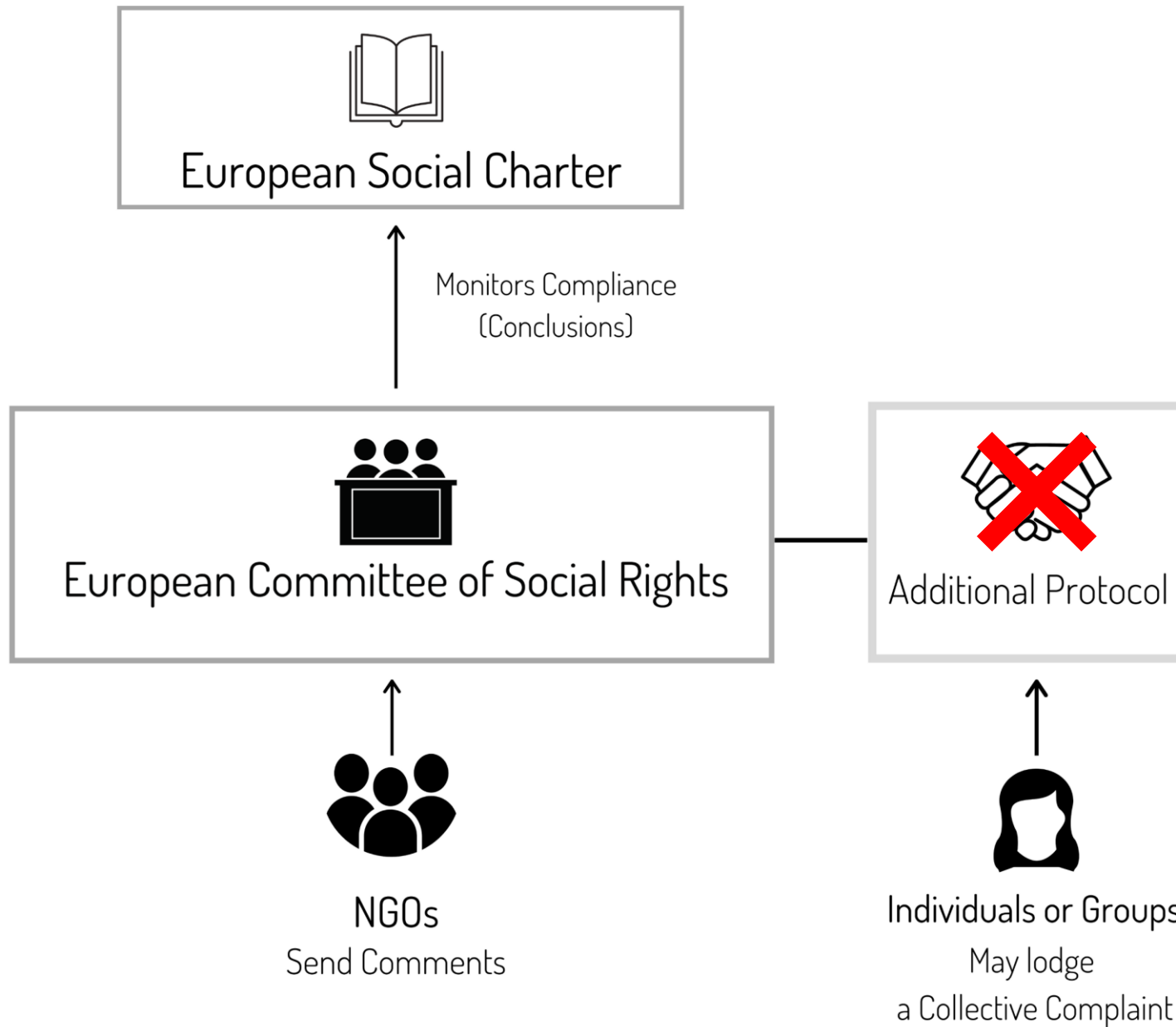
- to **promote access to housing** of an adequate standard;
- to **prevent and reduce homelessness with a view to its gradual elimination;**
- to **make the price of housing accessible** to those without adequate resources.

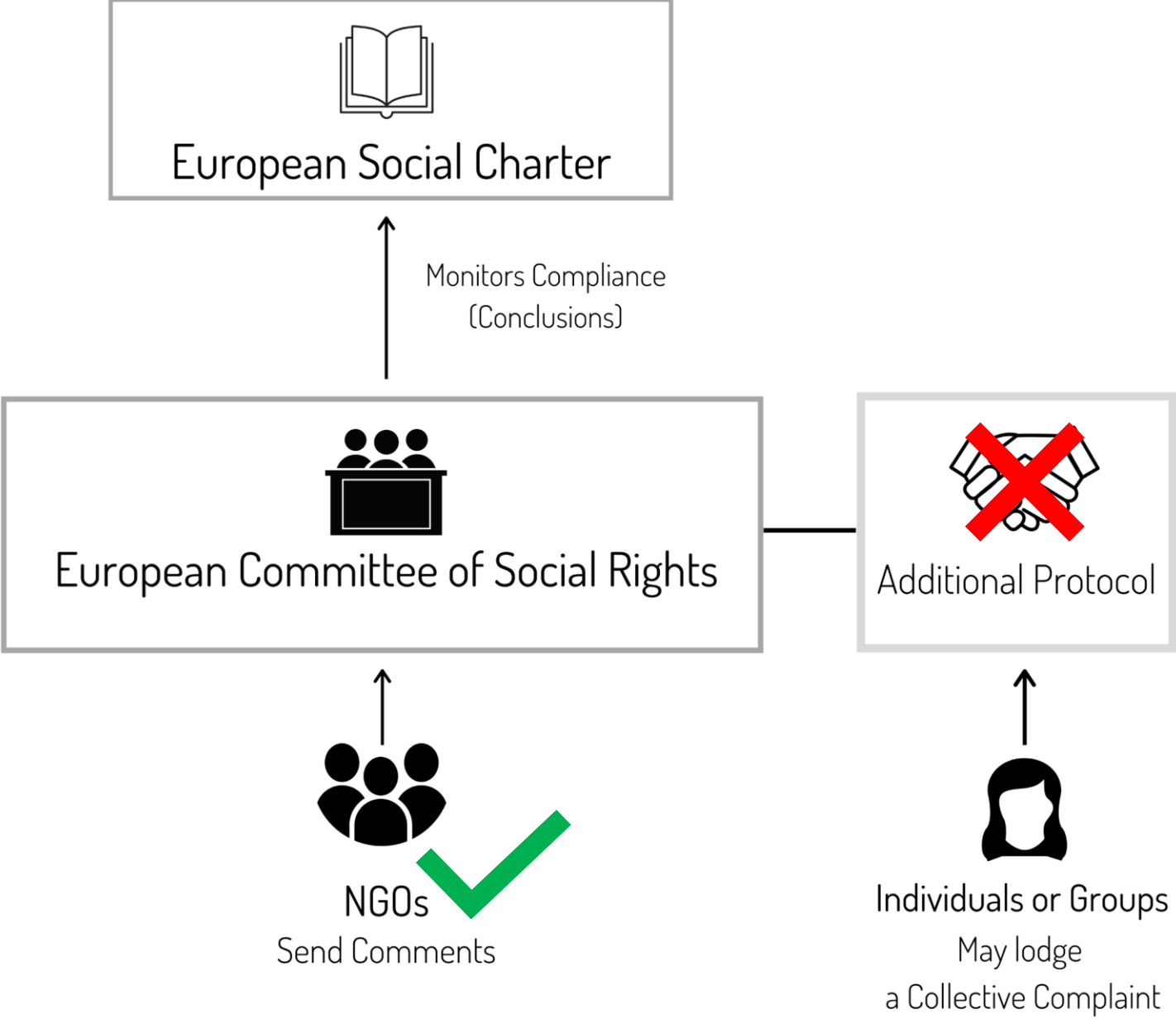
- **Article 16:** The family as a fundamental unit of society has the **right to appropriate social, legal and economic protection to ensure its full development.**

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means.



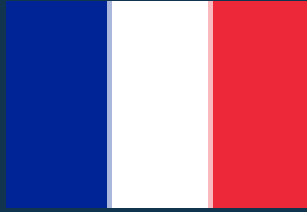






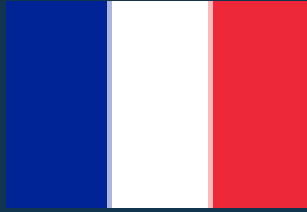
Individuals or Groups
May lodge
a Collective Complaint

Collective Complaint FEANTSA v France(2008): violation of article 31



- The ECSR found **six violations** of Article 31 by France:
 - Insufficient progress as regards the eradication of substandard housing and lack of proper amenities for a large number of households;
 - Unsatisfactory implementation of the legislation on the prevention of evictions;
 - Measures in place to reduce the number of homeless people were insufficient;
 - Insufficient supply of social housing accessible to low-income groups;
 - Malfunctioning of the social housing allocation system, and the related remedies;
 - Deficient implementation of legislation on stopping places for Travellers;

Collective Complaint FEANTSA v. France, effective implementation



- Article 31 cannot be interpreted as imposing on states an obligation of “results.”
- The rights recognised in the Social Charter must **take a practical and effective, rather than purely theoretical form.**
- This means that, for the situation to be compatible with the treaty, states party 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 review 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.

Right to Housing in Europe: EU Charter of Fundamental rights



Charter of Fundamental Rights:

- Applies to the Institutions of the EU and its member states in the implementation of EU Law
- Article 34 recognises and respects the **right to social and housing assistance**

FEANTSA's work in this area:

- Pillar of Social Rights, principle 19. (Non-binding / policy tool)
- Monitor progress on the right to housing
- Social Scoreboard-European Semester

European mechanisms



Article 34.3 draws on **Article 13** of the **European Social Charter** and **Articles 30 and 31** of the **Revised Social Charter (explanations)**



Pillar of Social Rights is based on Charter of Fundamental Rights that in turn is based on European Social Charter



Feedback between caselaw of CJEU and ECHR and ECSR



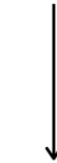
Need to use existing binding obligations in case-law as benchmarks/ monitoring indicators to assess progress on the right to housing.



The interpretative reference for relevant EU law rights must come mainly from ESC rights clarified by the Council of Europe.




European Convention
of Human Rights



European Court
of Human Rights



Case Law


European Social
Charter



European Committee
of Social Rights



Reporting System



Conclusions



Additional Protocol
Collective Complaints



Decisions



EU Treaties (TEU)



Treaty of the Functioning of
the European Union (TFEU)

Secondary Legislation



Charter of Fundamental Rights



European
Commission



European
Parliament



European
Council



Court of Justice of the EU



Case Law

Housing-related Binding Obligations

- Rulings of Court of Justice of the EU (CJEU)
- Rulings of European Court of Human rights (ECHR)
- Collective Complaints Decisions
 - European Committee of Social Rights (ECSR)
- Reporting System Conclusions
 - European Committee of Social Rights (ECSR)
- Decisions from UN Committees- expert bodies-
- Concluding Observations (recommendations)

Housing-related Binding Obligations: what thematic?

- Shaping of public policy and its evaluation
- Adequate quality housing / healthy environment
- Affordable housing
- Appeal and legal recourse to ensure the right to housing
- Statutory Protection of the home
- Evictions
- Homelessness
- Unfair terms
- Shelter/ emergency accommodation
- Roma and Travellers
- Foreign Nationals

Homelessness

Definition	Homelessness is defined as not having access to adequate housing,	European Committee of Social Rights	ECSR Conclusions on Italy, 2003
Prevention	No eviction must take place if the public authority has not looked for alternative methods for rehousing (...)	European Court of Human Rights	Yordanova and Others v. Bulgaria, no. 25446/06
Principle of proportionality	Particular attention must be paid to the consequences of an eviction; notably whether an eviction could cause the persons affected to become homeless.	European Court of Human Rights	Winterstein and Others v. France, no. 27013/07
Specific measures for vulnerable groups	States must act to make sure vulnerable people are not deprived of shelter (in addition to policies to promote access to social housing for low-income groups)	European Committee of Social Rights	ECSR Conclusions on Lithuania, 2005