



## Failure to enforce decision on re-housing under French “Right to Housing” Act

In today’s **Chamber judgment**<sup>1</sup> in the case of **[Tchokontio Happi v. France](#)** (application no. 65829/12) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.**

The case concerned a failure to enforce a final judgment granting the applicant accommodation in the context of the law on the enforceable right to housing (known as the “DALO” Act). This is the first time that the Court has dealt with an application against France concerning non-enforcement of a decision to grant housing.

The Court took the view that the French Government could not rely on a lack of resources to explain why the applicant had still not been re-housed, over three and a half years after the judgment was delivered, in spite of the order that the matter be dealt with urgently.

Nevertheless, the Court explained that the right to a “social tenancy”, enabling the applicant to use property but not to acquire it, did not mean that she was granted a “possession” within the meaning of Article 1 of Protocol No. 1 (protection of property).

### Principal facts

The applicant Elisabeth Tchokontio Happi, is a national of Cameroon who was born in 1972 and lives in Paris.

Ms Tchokontio Happi has been living with her daughter and brother in the Paris region since 2003. In a decision of 12 February 2010, notified on 12 March 2010, the Paris Mediation Commission, finding that they were housed in indecent and insalubrious conditions, earmarked their case as a priority for urgent re-housing.

Six months from the date of that decision she had not received an offer of housing which took account of her needs and capacities so the applicant lodged an application with the Paris Administrative Court under the law on the enforceable right to housing, the “DALO” Act of 5 March 2007, with the objective of obtaining new accommodation. The Act in question provides that a right to decent and independent housing, for individuals who are unable to obtain it by their own means or to keep their existing housing, is guaranteed by the State. The State is bound by an obligation as to the results to be achieved and not only as to means. To that end the Act introduced a procedure for the effective allocation of housing, involving initial recourse to the *département*-level mediation commission and then, if necessary, proceedings in the Administrative Court.

On 28 December 2010 the Paris Administrative Court upheld Ms Tchokontio Happi’s application, instructing the Prefect of the Ile-de-France region to re-house her, her daughter and her brother, imposing a fine on the authority, payable to the urban development fund of the Ile-de-France region, of 700 euros (EUR) per month of delay from 1 February 2011 onwards.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

On 31 January 2012, as Ms Tchokontio Happi had still not been re-housed, the Administrative Court provisionally enforced the fine for the period 1 February 2011 to 31 January 2012, ordering the State to pay EUR 8,400 to the urban development fund of the Ile-de-France region. To date the applicant and her family have not yet been re-housed.

## Complaints, procedure and composition of the Court

Ms Tchokontio Happi complained that she had still not been re-housed in spite of the final judgment of 28 December 2010 ordering the Prefect of the Ile-de-France region to find her suitable housing.

The application was lodged with the European Court of Human Rights on 8 October 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Mark Villiger (Liechtenstein), *President*,  
Boštjan M. Zupančič (Slovenia),  
Ganna Yudkivska (Ukraine),  
Vincent A. de Gaetano (Malta),  
André Potocki (France),  
Helena Jäderblom (Sweden),  
Aleš Pejchal (the Czech Republic),

and also Claudia Westerdiek, *Section Registrar*.

## Decision of the Court

### [Article 6 § 1 \(right to a fair trial\)](#)

The Court took the view that the applicant's complaint raised questions under Article 6 § 1.

It found that as Ms Tchokontio Happi had not been rehoused, the judgment of 28 December 2010 had not been fully enforced over three and a half years later, even though the French courts had indicated that her case had to be resolved with particular urgency. While the fine ordered in that judgment had certainly been enforced and paid by the State, it had no compensatory function and was not paid to the applicant but to a State-run fund.

The failure to enforce the judgment in question was not based on any valid justification within the meaning of the Court's case-law, according to which it was not open to a State authority to cite a lack of funds or other resources as an excuse for not honouring, for example, a judgment debt.

Consequently, by failing for several years to take the necessary measures to comply with the decision ordering the re-housing of the applicant, the French authorities had deprived Article 6 § 1 of all useful effect. The Court thus found that there had been a violation of this provision.

### [Article 1 of Protocol No. 1 \(protection of property\)](#)

The Court found that the applicant's complaint also raised questions under Article 1 of Protocol No. 1.

The Court reiterated that a "claim" – potentially covering even the receipt of a particular welfare benefit – could constitute a "possession" within the meaning of Article 1 of Protocol No. 1 if it was sufficiently established as to be enforceable.

According to the judgment of 28 December 2010 Ms Tchokontio Happi was to enjoy the right to use a flat, not the right to acquire one. She did not therefore have any "legitimate expectation" of acquiring any property. Accordingly, it could not be considered that the nature of her claim – her

right to a “social tenancy” – constituted a “possession” within the meaning of Article 1 of Protocol No. 1, and the Court thus found this complaint inadmissible.

#### [Article 41 \(just satisfaction\)](#)

As the applicant had not claimed just satisfaction, the Court made no award under that head.

*The judgment is available only in French.*

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