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MEAN STREETS

A REPORT ON THE CRIMINALISATION OF HOMELESSNESS IN EUROPE

POVERTY IS NOT A CRIME. IT'S A SCANDAL.

Fondation Abbé Pierre
FEANTSA
HOUSING RIGHTS WATCH

CHAPTER VI

Penalisation of Homelessness in Access to Social Housing and Shelters

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"Tell me whom you legislate for and I'll tell you who you are"
David Fernàndez and August Gil Matamala (2012)

This chapter examines contemporary developments in relation to access to social housing and shelters across a number of EU States. This is considered within the context of a growing penalisation of homelessness. We examine how the implementation of the culture of exceptionalism in criminal policy (and the criminal law of the enemy), explained in chapter II, is applied in social policies (and homeless policies) based on the administrative status of people and not on the basis of their needs, through the sanctioning of access in a "dual housing system". The criminalisation of Travellers and Roma in Europe is also explored, as well as the international human rights law relating to minimum core obligations of states. The relevance of Council of Europe housing rights approaches appears to be correctly focussed; yet. States are not developing access policies in line with these standards. .

The penalising of poverty and homelessness can take on different forms; one of these is the restriction of access to public services and social benefits. The report on "Extreme Poverty and Human Rights" (2011) by Magdalena Sepúlveda, the United Nations Special Rapporteur, considers that in order to justify these measures, States point to the need to make efficient use of public resources, improve the accuracy of targeting, avoid dependency, eliminate disincentives to work and deter abuse of the system. While these may be valid concerns, the impact of these measures is often disproportionate to the aim they seek to achieve. Support for these measures is not based on strong evidence of their effectiveness and economic efficiency, but rather on discriminatory stigmas and stereotypes, perpetuated by the media, that portray recipients of social benefits as lazy, dishonest and untrustworthy (Sepúlveda, 2011). In addition to the personal obstacles resulting from living in poverty, like not having a fixed address, lacking proof of identity or gaps in education, difficulties with literacy and communication when seeking to comply with often complex and opaque requirements, people living in poverty are also victims of media and political campaigns that stigmatize and influence the public discourse on poverty. For instance, political rhetoric focuses disproportionately on fraud related to social benefits, placing it above tax fraud, which is a far greater burden on the State (Sepúlveda, 2011). One of the most serious forms of penalisation of homelessness is the restriction of access to social housing and shelters. Often, the common criteria used to determine eligibility, which can include years of residence in the country, years of registered residence in a specific municipality, income, credit history, health, diagnosis of certain diseases or dependencies, or having a criminal record can count against people who are in dire need of services like social housing and shelter.

So, while policy goals may be diverse and can be justified more or less from a point of view of political management of poverty, they often represent a violation of human rights. Some examples of how this manifests itself through administration include the following:

- Adapting resources to the needs of certain groups and not of others.
- Restrictive definitions of problems to reduce the target population due to lack of financial resources.
- Reducing or increasing statistical variables to fulfil a political mandate.
- Prioritizing the access of some groups over others.
- Preventing the entry of certain groups to certain areas of a city.
- Making poverty invisible by forcing it to the margins of the city or to unhealthy locations.

These tactics –– whether inadvertent or explicit –– can ultimately cause the poor population or people in irregular administrative situations to leave the country.

The report on "Social Housing Allocation and Homelessness" by the European Observatory on Homelessness shows how, in 13 European countries, social housing only partially meets the housing needs of homeless people. There were six main reasons for this:

- Insufficient supply of social housing relative to all forms of housing need.
- Allocation systems run by social housing providers focused on meeting forms of housing needs other than homelessness.
- The requirement on social housing providers in some countries to balance different roles, including pressures to continue to meet housing needs while also moving towards marketization and social enterprise models.
- Attitudinal and perceptual barriers centred on a belief that homeless people would be "difficult" tenants and neighbours.
- Perceived tensions between avoiding spatial concentrations of poverty and associated negative area effects, and housing significant numbers of homeless people.
- Poor policy coordination between NGOs, social services and social housing providers.

The report points out that allocation systems for social housing did not prioritize some forms of homelessness, concentrating instead on other forms of housing needs. Social housing providers often avoided housing certain groups to which homeless people sometimes belonged. For example, the report highlights that social housing providers in countries including Sweden, Poland, The Netherlands, the UK, Finland, Ireland and Belgium have been known to exclude households with a history of rent arrears, households that had been previously evicted, and households with a history of nuisance or criminal behaviour (Pleace *et al.,* 2011). Also, people living rough were generally not a target group for social housing allocation, nor were the populations living in emergency accommodation and shelters. Living rough was rarely, in itself, enough to secure access to social housing, even in the minority of countries with relatively extensive housing rights legislation (Pleace *et*

al., 2011). For example, despite significant reductions in rough sleeping over the last decade in England, a number of barriers to permanent rehousing remain for the street homeless population, not least the woeful lack of appropriate move-on accommodation (Shelter, 2007). Moreover, the research of the European Observatory on Homelessness showed that there was unequal access to social housing based on presumptions about homelessness among social housing providers. For example, the misperception among social housing providers that all homeless people would create housing management problems, resulted in decisions to block access to social housing for this group. This is an attitudinal barrier because it is based on the incorrect presumption that all homeless people are likely to exhibit challenging behaviour and have high support needs (Pleace *et al.,* 2011).

HOUSING OPTIONS INTERVIEWS AND THE "GATE-KEEPING" DEBATE IN ENGLAND

In England, gate-keeping practices are sometimes used as a means of penalising "undesirable" homeless people and preventing them access to social housing. While in some parts of England, the housing options system –– which involves interviews with the homeless or potentially homeless families –– is very successful, other municipalities use this interview process as an excuse to restrict access to accommodation.

A legislative framework –– the Housing (Homeless Persons) Act 1977 –– has existed for many years in the UK. This framework sets out that local authorities must ensure that accommodation is made available to households that are "eligible" for assistance, "unintentionally homeless", and in "priority need", which are described as "statutory homeless". There has been substantial legislative divergence on homelessness since devolution of legislative powers. The original 1977 Act was subsequently incorporated into separate legislation for England, Wales, Scotland and Northern Ireland. As explained by Wilcox *et al.* (2010) in England, the number of statutory homeless acceptances rose steeply in the late 1990s and early 2000s, as housing affordability deteriorated, squeezing many low-income households out of the market. Since 2003/04, however, there has been an unprecedented reduction in homeless acceptances in England, with the total halving by 2007/08; and in the last quarter of 2012, around 13,570 households were accepted as homeless and in priority need in England, an increase of 6% on the same period in 2011. In Wales, there was a sharp upward trend in homelessness acceptances until 2004/05, but this has since reversed. In Scotland, homelessness acceptances grew steadily up to 2005/06, but have since dropped back slightly; a broadly similar pattern is evident in Northern Ireland (Wilcox *et al.*, 2010). However, it is also clear that the homelessness legislation is by no means perfect. Critical here is the "housing options" approach in England, promoted by Central Government (DCLG, 2006). As explained by Pawson *et al.* (2007), reductions in total "homelessness decisions", probably reflect the success of the renewed emphasis on homelessness prevention, and may in part reflect successful solutions to housing problems as a result of such interventions.

However, one factor that may be relevant here is the way that a housing options approach could potentially have the effect of reducing the number of households for whom a formal homelessness assessment is deemed necessary. Some housing options interviews involving households claiming to be homeless or threatened with homelessness will result in an initial judgment that the authority has no reason to believe that the applicant is or may be homeless or threatened with homelessness. Given that households in these circumstances might otherwise have been subject to a formal homelessness assessment, it may be that the number of formally recorded "decisions" under a housing options regime will be lower than would otherwise be the case (Pawson *et al.*, 2007). Under a housing options system, all households approaching a local authority for assistance with housing are given a formal interview offering advice on their housing options, which may include services such as family mediation or landlord liaison that are designed to prevent the need to make a homelessness application. There is genuine concern that the effective homelessness prevention practiced in some areas of England is being undermined by gate-keeping in others (Shelter, 2007). In some areas, these housing options interviews can represent a barrier to making an official homelessness application with certain local authorities (unlawfully) requiring potential homeless applicants to exhaust all potential preventative avenues before any formal consideration of their statutory homelessness status takes place (Busch-Geertsema *et al.,* 2008).

Once again, the point of litigation was the form in which this misuse of legislation was manifested. The case of Robinson v Hammersmith & Fulham (LBC 2006 EWCA Civ 1122) has highlighted the illegality of "gate-keeping" practices: where a local authority delays or postpones Section 184 of the Housing Act 1996 enquiries pending the outcome of homelessness prevention measures (e.g. family mediation). In the light of the reminder provided by this case, local authorities should be reviewing their procedures and practices to ensure that they are complying with their duties under Housing Act 1996 Part 7, in particular their duty to undertake enquiries where they have reason to believe that an applicant for assistance may be homeless or threatened with homelessness (Pawson *et al.*, 2007).

SOCIAL MIX AND DISCRIMINATION IN FRANCE

France uses a different approach when allocating social housing. France's approach has been criticised by a number of academics, and in 2008 was found to violate Article 31 of the Revised European Social Charter as it failed to ensure the right to housing. There is a compelling argument that the emphasis on "social mix" in social housing in fact reinforces discrimination. Furthermore, the allocation of social housing is neither transparent nor based on formal criteria, which leads to penalisation of certain groups and individuals who are prevented from accessing housing.

In relation to the concentration of poverty in social housing zones and blocks of flats, the report "Social Housing Allocation and Homelessness" notes that although "social mix in social housing" policies have been developed in some countries (France, Sweden, The Netherlands and Germany), these policy interventions were

viewed by some expert respondents as limiting the opportunities to access social housing for various vulnerable and/or poor groups of people, including homeless people (Pleace *et al.,* 2011). For example, in the Collective Complaint 39/2006 FEANTSA vs. France, the European Committee of Social Rights (ECSR), the Council of Europe body responsible for monitoring the implementation of the European Social Charter, reached the unanimous decision that France is in violation of the Charter with regards to housing rights (article 31). The ECSR has ruled that France is not in conformity with Article 31 on six grounds pertaining to: inadequate housing conditions, preventing evictions, reducing homelessness, providing social housing aimed at the most deprived, social housing allocation, and discrimination against Travellers.

In reference to the allocation system for social housing, the Committee considered that although the Anti-Exclusion Act of 1998 represented an effort to improve the system for allocating social rental housing, there was clear evidence that the system still did not work well. Firstly, because a large part of the demand for social housing is not met (only 5-10% of the poorest households were allocated social housing), and secondly, because the average waiting period for allocation continued to be too long (around two years and four months) and in particular, the waiting periods for migrant households were longer than average. The Committee considered that the application of the concept of "social mix" in the 1998 Act, which is often used as the basis for refusing social housing, often leads to discretionary decisions that exclude poor people from access to social housing. The major problem stems from the lack of a clear definition of this concept in the law, and in particular, from the lack of any guidelines on how to implement it in practice. There are indirect forms of discrimination based on the length of residence in the municipality, often preventing migrants from fulfilling this condition. A remedy in the event of discrimination does indeed exist: Article L-225.1 of the Penal Code outlaws any distinction between natural persons on the ground of their origin, gender, etc. Moreover, the Act of 29 July 1998 required social housing providers to inform applicants of the reasons for being refused an allocation, but as this Act also introduced the goal of social mix without specifying how to achieve it, applicants can be turned down without it being possible to discern any discrimination. In practice, discrimination is often very hard to prove. The decision on FEANTSA's collective complaint against France reinforced social segregation (Auorif 2012, Grand Lyon 2011). The past ten years have seen an intensification and increase in poverty and illiteracy levels, and continued difficulties to access services like healthcare, particularly in areas where these social problems existed. Despite direction by various public bodies and experts (*comités des sages*), the allocation of social housing remains discretionary and is based on informal criteria that is opaque and not available to applicants.

ACCESS TO EMERGENCY SHELTER FOR IRREGULAR MIGRANTS IN THE NETHERLANDS

In The Netherlands, homeless migrants can be barred from accessing emergency shelter. International NGOs like the Platform for International Cooperation on Undocumented Migrants (PICUM) and FEANTSA have challenged this penalisation

of irregular migrants through strategic litigation, including an on-going collective complaint against The Netherlands before the European Committee of Social Rights. Irregular migrants are penalised despite holding rights under the Council of Europe's Charter and other treaties.

A report by PICUM (2004) highlights the major difficulties faced by undocumented immigrants when accessing social housing in Austria, Germany, The Netherlands, Belgium, Italy and Spain. On some rare occasions, local authorities agree to house undocumented migrants in social housing while they work on regularising their situation and due to very vulnerable personal situations. Sometimes asylum seekers are still living in social housing after being rejected from the asylum procedure (during which asylum seekers are sometimes housed in social housing). But undocumented migrants face serious legal obstacles in trying to access social housing (Van Parys *et al.*, 2004). For example, as Christian Perl (2010) explains, in Austria the question of allocation of social housing to migrants, minorities and people of different religious affiliation is politically sensitive and legally unclear for many of the stakeholders involved. For instance, municipalities have established criteria for access to social housing which includes a "sufficient" level of German language skills, and have introduced maximum quotas for migrants. The criteria are designed to appear objective so as to prevent discrimination against socially or ethnically unpopular house-hunters; however, in reality people from different ethnic or religious backgrounds are often denied access to social housing. (Perl, 2010). In general, the housing situation of irregular migrants in Europe is characterized by a high level of mobility (Cholewinski, 2005). PICUM has undertaken a mapping exercise of housing in six European countries and identified five ways in which irregular migrants are housed:

- By homeless services organisations.
- In private housing (although a legal migration status is not always necessary to sign a rental contract, in practice, documents are often requested from irregular migrants).
- In emergency shelters (which usually provide accommodation for one night only and in some places are not open to irregular migrants).
- By NGOs working with irregular migrants.
- With the assistance of families and community networks.

Recent EU measures penalising the provision of assistance in connection with the residence of irregular migrants in the territory of EU Member States are likely to exacerbate the already difficult housing situation of irregular migrants (Cholewinski, 2005). Take, for example, the Netherlands, which in the last few years has embarked on a policy to exclude irregular migrants from most forms of social protection with a dual goal of ensuring that irregular migrants leave its territory and deterring further irregular migration.

In 2006, the four major cities of the Netherlands (Amsterdam, Rotterdam, Utrecht and The Hague, known as the "G4") signed an agreement with the government on addressing homelessness in major cities. Under this agreement, the parties committed

themselves to bringing homelessness to an end over a period of eight years (Kamp, 2010). The first objective was to improve the situation of the initial target group identified as homeless, and the second phase aimed to prevent homelessness amongst a broader group of people identified as vulnerable and to provide suitable support interventions for these people. In the four big cities and in other Dutch cities, the objectives and methods were presented in a so-called "City Compass". The Compass aims to create an individualised assistance approach, for which interagency agreements are made to meet individual needs. The first phase of the strategy was aimed at the 10,150 rough sleepers in the four main cities in the Netherlands and the second phase will include all 21,800 people who are registered as tenants with social assistance institutions. Such holistic and service-user centred approaches should prevent homeless people, including those with multiple and complex needs, from slipping through the net (FEANTSA, 2010).

As Joris Sprakel (2010) explains, in The Netherlands since the late 1990s, national laws have effectively excluded irregular migrants from any government assistance. On the basis of Article 10 Vw2000, irregular migrants are entitled to some government services such as education, legal aid and emergency medical care. As of 1 January 2010, the situation worsened when local authorities were instructed by the national government to no longer provide emergency shelter to any irregular migrant, including families with children. In the courts' view, the access to government assistance –– including emergency shelter –– for irregular migrants would prolong their stay needlessly and "seriously undermine" the migration policy of The Netherlands (Sprakel, 2010). In this regard, the Council of Europe's European Committee of Social Rights released its October 2009 decision on Collective Complaint 47/2008 brought by Defence for Children International (DCI) v. the Netherlands in February of 2010. In this case, the complaint addressed the situation of children not lawfully present in The Netherlands, who are excluded by law and practice from the right to housing (particularly article 31.1 and 31.2 Revised European Social Charter). DCI states that housing is a prerequisite for the preservation of human dignity and, therefore, that legislation or practice that denies housing to foreign nationals, even if they are on the territory unlawfully, should be considered contrary to the Revised Charter. The Dutch government argued that the collective complaint was groundless because the children whose rights are allegedly violated by the contested Dutch legislation and practice are outside the "ratione personae" scope of the Revised Charter, as they do not meet the conditions established in section 1 of the Annex, since they do not reside legally in the country. The Government further argued that the complaint was unfounded since law and practice in The Netherlands allow for the provision of accommodation as "exceptions" exist to the principle that unlawfully present children cannot enjoy entitlements to public provision. The conclusion by the Council of Europe's European Committee of Social Rights was that The Netherlands had violated article 31.2 –– the prevention and reduction of homelessness, and article 17.1.c –– the protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support. The argument was based on the fact that Member States must provide adequate shelter to children unlawfully present in their territory for as long as they remain in their jurisdiction. Any other solution would run counter to the respect for their human dignity and would not take due account of the particularly vulnerable situation of children.

In July 2012, FEANTSA filed a Collective Complaint against The Netherlands (Complaint No. 86/2012) claiming that The Netherlands' legislation, policy and practice regarding sheltering homeless people is not compatible with the relevant provisions of the Revised Social Charter. FEANTSA has identified three issues that are not compatible with the relevant provisions of the Revised Charter:

- Access to (emergency) shelter is conditional on a connection to a municipality –– called a local connection criterion –– or on other criteria, which impacts the rights of homeless persons and (un)lawfully residing migrant(s) (workers).
- The availability and quality of (emergency) shelters is inadequate, negatively impacting women, children, and young persons (i.e. vulnerable persons).
- Due to a lack of coordination between the 43 responsible municipalities, there is a hindrance to the progression in the housing situation of homeless people.

The first point is a clear example of penalisation of homelessness. Out of the 43 municipalities that are responsible for providing (emergency) shelter, a substantial number have introduced a requirement of a (local) connection to the region ("regiobinding") before a person is deemed entitled to emergency shelter. Local connection can be proven if a person can provide documentation that shows evidence of residency within the region over a period of two out of three years. According to FEANTSA's arguments in Complaint No. 86/2012, in practice this proves problematic for a variety of groups:

- Homeless persons, due to the lack of registration in the municipal registry (Gemeentelijke Basisadministratie or GBA). Although alternative proof is accepted (i.e. criminal records, bank statements, etc.), the GBA is the starting point.
- Former addicts who wish to escape their "enablers" (i.e. drug dealers and addicted friends), may have local connection, but may want to live in a different region (this speaks to choice of residence as well).
- Migrants regardless of their legal status, due to the fact that they have not established a local connection over the specified amount of time.
- Roma and other marginalized groups for lack of documentation and, often, lack of proof of identity.

Besides the local connection criterion, the municipalities also apply other criteria in order to determine whether a person should be granted (emergency) shelter, for example having Dutch citizenship or lawful residency under the Aliens Act 2000, being aged 23 years or over, or belonging to the target group to be addressed as defined in the strategy. Thus, if a homeless person has no (serious) mental health issues and/or is capable of finding (usually temporary) solutions to homelessness, he or she is excluded from (emergency) shelter. In the case of EU citizen and other lawful migrant workers, although EU citizens are not excluded from (emergency) shelter according to the law, in practice access to shelter is refused. The Netherlands government argues that if the EU citizen is residing lawfully as a "worker", this means he/she is responsible for his/her own housing. This argument is based on the fact that freedom of movement within the EU is allowed only if the EU citizens concerned can support themselves. The result is that if the EU citizen loses his

or her job, The Netherlands government argues that he/she has to return to their country of origin where he/she would have an entitlement to (emergency) shelter. Besides, the Netherlands government has, by law, prohibited any government or government agency from providing irregular migrants with grants (*verstrekkingen*), provisions (*voorzieningen*) and social benefits (*uitkeringen*). The Aliens Act makes an exception for emergency medical care, schooling of children and legal assistance costs. The aforementioned prohibition was introduced in The Netherlands legal system with the 1998 Benefit Entitlement Act ("Koppelingswet") with the main purpose of excluding irregular migrants from all public services and denying their entitlement to shelter. FEANTSA believes that the only criterion to decide access to (emergency) is need.

The European Committee on Social Rights has not yet decided on the Collective Complaint (July 2013), but The Netherlands government argued in its submissions that the complaint is not admissible. The government defended its restrictive migration policy as necessary to control immigration and motivate irregular migrants to leave on their own accord. The government submits that it is acting in accordance with international law by denying undocumented migrants access to shelter. In its submissions, the Dutch government refers to possible solutions that the undocumented migrant may have in case of destitution. Option one is voluntary return. This is not an option for all undocumented migrants. It is also a solution with limitations. Firstly, the shelter offered is a form of imprisonment, because the migrant is not free to leave the premises. Secondly, it is limited in duration: if the return is not successful, the provision of shelter is discontinued, leaving the undocumented migrant on the streets. The second option the government describes is that the undocumented migrant turns to churches or other charity organizations for help. However, it is not the charity organizations who signed the Charter. The State has obligations to assess the need for those who turn to them for help. The government cannot shift this responsibility to charity organizations, however well-intentioned. Ultimately, the Charter is an instrument that is intended to create rights for individuals and obligations for the State.

ROMA AND TRAVELLERS IN EUROPE

Roma and Travellers continue to face penalisation, criminalisation and discrimination across the EU, despite important steps to ensure their access to rights. Racism, discrimination, segregation, evictions and expulsions form part of the everyday experience of residential exclusion of Roma and Travellers in Europe. The discrimination they suffer is manifested in many forms. Direct discrimination is manifested, for example, in accommodation advertisements indicating "no gypsies" or in the denial of access to private rental housing on an equal footing with others and in some cases, refusals even to sell housing to Roma (Hammarberg, 2012). Indirect discrimination is manifested, for example, in access to social housing. According to the Fundamental Rights Agency (2009) in some European countries, Roma and Travellers live in social housing in disproportionate numbers compared to their proportion of the population as a whole, but the criteria for the allocation of social housing are often unclear,

too restrictive and, in some cases, reportedly discriminatory. Local authorities deny their access to social housing through measures that are directly or indirectly discriminatory against Roma and Travellers (FRA, 2009). In addition, they are also subject to harassment. As documented by the Commissioner for Human Rights of the Council of Europe, arbitrary seizure of property is reported during police stops on the street or at border controls, during searches when Roma people are begging and during raids on Roma settlements. Large-scale destruction of Roma property, including housing structures, has been documented during police raids on Roma communities (Hammarberg, 2012). In Italy, for example, between November 2006 and May 2009, fourteen different cities adopted "Security Pacts" that empowered officials to target Roma for removal from the areas where they had settled. On 18 May 2007, national and regional-level officials in Milan and Rome signed such pacts and granted municipal authorities special powers to forcibly evict more than 10 000 Roma living on those territories (Hammarberg, 2012).

Denial of access to key goods and services has concrete implications notably for the exercise of the right to freedom of movement in the EU, where the Roma concerned leave one EU Member State and arrive in another, as well as for the ability of Roma from outside the EU to arrive in and settle legally in an EU Member State, or another state in the OSCE region. In addition, anti-Romani sentiment has, in some cases, resulted in an erosion of the right under international law to seek and enjoy asylum from persecution (Cahn *et al.*, 2008).

The rules on the free movement of EU citizens inside the European Union – extensively developed under EU law –– are currently set out in Council Directive 2004/38/EC of 29 April 2004, "the Free Movement Directive". EU Member States, despite these provisions, have also discriminated against Roma EU citizens exercising their right to freedom of movement (Hammarberg, 2012). Travellers in some countries face particular barriers to accessing housing allowances because their chosen accommodation, such as a caravan, does not meet the definition of a house (FRA, 2009). While the right to housing generally includes the right to access to housing (rented –– social or private sector –– or owned), Travellers, who mostly own their caravans, are looking for a different type of public intervention: the provision of serviced sites. Looking more closely, these places are much less of a "burden" on the authorities than traditional types of assistance (provision of social housing, tax incentives for homebuyers, low-rate mortgages, renovation grants, rent allowances, etc.) yet, paradoxically, seems to create the most problems with the local community (Bernard *et al.*, 2010).

In France, the Internal Security Act of March 2003 permitted police to act within 48 hours (without requesting permission from courts or landowners) against anyone interfering with "law and order, hygiene or public peace and safety". In August 2010, the Sarkozy government decided to evacuate around 300 illegal Roma and Traveller camps. In August 2012 the new Hollande government evacuated some 200 people from two Roma camps on the outskirts of Lille, in northern France, while some 250 Romanians were put on a charter flight from Lyons to Romania, in what was denounced as "disguised expulsions" or described as "voluntary return". "Security" reasons were used in the former case, while in the latter the Interior Ministry alleged

"health risks" and insisted on the need to search for alternative accommodation for the displaced people. In both cases, a part of the population has been stigmatised, their human rights violated and other internal laws broken.

FEANTSA's Collective Complaint (39/2006) against France showed that the legislation introduced in France (5 July 2000) requiring municipalities with over 5,000 residents to set up permanent stopping places for Travellers had only been implemented in a minority of municipalities. The French government acknowledged the delay in implementing this scheme and estimated a deficit of around 41,800 places. The ECSR said this delay forced Travellers to use illegal sites, which exposed them to the risk of eviction under France's 2003 Act on internal security. The conclusions of the ECSR said "States must make sure that evictions are justified and are carried out in conditions that respect the dignity of the persons concerned, and that alternative accommodation is available". The ECSR made the same conclusion two years later following a Collective Complaint (51/2008) by the European Roma Rights Centre (ERRC). The ERRC complaint also exposed the poor living conditions at the sites that had been created: not all stopping places met the required sanitary norms and some were created outside urban areas or near electrical transformers or very busy roads, making them difficult –– if not dangerous –– to use.

MINIMUM CORE OBLIGATIONS AND HOMELESSNESS

We have seen different ways in which homelessness is penalised, in terms of access to emergency shelters and access to space for camps for travelling communities. But are there any obligations for the state to prevent such policies and practices? Economic, social and cultural rights include the right to adequate food, shelter, education, work and an adequate standard of living. All states have committed to the realisation of these rights by ratifying relevant international treaties, such as the UN Charter, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination Against Women. The core aspect of these treaties is best reflected in the ICESCR in which states commit: "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, including particularly the adoption of legislative measures."[1]

But it is important to distinguish between the obligation of progressive realization of human rights and the minimum core obligations, which apply to states regardless of their economic circumstances. The minimum core obligation is a minimum threshold approach, below which no person should have to endure. This minimum

1. International Covenant on Economic, Social and Cultural Rights (ICESCR), 19 December 1966, 993 U.N.T.S. 3, Art. 2 (1).

core obligation corresponds to a level of distributive justice assessing how even is the distribution of socially guaranteed minimal levels of certain goods and benefits among individual groups within a country (Skogly, 1990). The concept of the "minimum core" seeks to establish a minimum legal content for the notoriously indeterminate claims of economic and social rights. Recognising the "minimum essential levels" of the rights to food, health, housing and education, reflects a "minimalist" rights strategy, which implies that maximum gains are made by minimizing goals (Young, 2008). But the minimal obligations should be considered a first step, and not the culmination of a process of materialisation of economic, social and cultural rights. The principle is not viewed as involving a minimalist approach. Even in cases of severe resource constraints, "the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programs". Such vulnerable groups include those excluded on the basis of race, gender, age, disability and other such characteristics, as well as the poor in general. "If a national or international anti-poverty strategy does not reflect this minimum threshold, it is inconsistent with the legally binding obligations of the State party[2]".

In its General Observation no. 3, the UN Committee on Economic, Social and Cultural Rights holds that States have "minimum basic obligations" to guarantee an essential level of enjoyment of all economic, social and cultural rights, as otherwise the Covenant would not make any sense: "… the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its raison d'être."

For example, Roisin Devlin and Sorcha Mckenna (2009) explain how immigration law and policy in the UK can lead to poverty and homelessness among certain types of migrants. These laws limit, to varying degrees, access to employment, welfare benefits and homelessness assistance to a range of migrants including asylum seekers fleeing violence or persecution. The findings from this investigation confirm that it is disproportionately weighted towards the Government's aims of regulating migration, paying little regard to the consequences for individual rights. As a result, the legislation excludes homeless and potentially destitute persons from homelessness assistance and welfare benefits, and permits statutory support in very limited circumstances only if necessary to avoid a breach of rights of the European Convention of Human Rights. This represents a negative approach to human rights, taking heed only when it is likely that basic rights are at serious risk of being (or have already been) violated. Instead, the EU should adopt a more positive approach in line with international human rights standards, encouraging state agencies to promote

2. http://www.acpp.org/RBAVer1_0/archives/CESCR%20Statement%20on%20Poverty.htm

rights by ensuring access to homelessness services in a way that ensures destitution does not arise in the first place (Mckenna, 2010).

In January 2000, the Committee of Ministers of the Council of Europe adopted Recommendation No. R (2000)3 on "the right to the satisfaction of basic material needs of persons in situations of extreme hardship", urging member state governments to put the following five principles into practice:

- Member states should recognise, in their law and practice, a right to the satisfaction of basic material needs of any person in a situation of extreme hardship.
- The right to the satisfaction of basic human material needs should contain, as a minimum, the right to food, clothing, shelter and basic medical care.
- The right to the satisfaction of basic human material needs should be enforceable –– every person in a situation of extreme hardship should be able to invoke it directly before the authorities and, if need be, before the courts.
- The exercise of this right should be open to all citizens and foreigners, whatever the latter's position under national rules on the status of foreigners, and in the manner determined by national authorities.
- The member states should ensure that the information available on the existence of this right is sufficient.

These principles identify a minimum threshold of treatment below which provision should not fall and which clearly cannot be denied to anyone for reason of their nationality or legal status (Cholewinski, 2005). Padraic Kenna (2010) explains how international housing instruments translate to obligations of immediate result: a requirement to undertake immediate action in relation to ensuring a minimum core obligation in terms of the rights concerned, without discrimination (Chapman and Russell, 2002). In terms of housing rights, the minimum core obligations involve a guarantee that everyone enjoys a right to adequate shelter and a minimum level of housing services without discrimination. Indeed, this concept has been applied to provide determinacy and justifiability to housing and other socioeconomic rights, providing minimum legal obligations, which are easily understood by courts and regulatory bodies (Young, 2008).

In the European context, Kenna (2010) explains how the Council of Europe has developed a range of normative housing rights standards. These relate to social and medical assistance for those without adequate resources; establish housing obligations for physically and mentally disabled persons, migrant workers, children and young persons; and establish rights to social, legal and economic protection for families, those who are poor and socially excluded, homeless people and those unable to afford accommodation (Kenna, 2010). In 2009, the Council of Europe Commissioner for Human Rights further clarified the actual extent of State obligations arising from its housing rights instruments. The European Court of Human Rights is developing housing rights in an indirect and oblique way through its Articles on the prevention of inhuman and degrading treatment, protection of home, family life and correspondence, fair procedures and non-discrimination. The fundamental rights contained in the Treaties and Directives of the European Union

are now addressing housing rights and discrimination on grounds of migrant workers status, race or ethnicity or gender (Kenna, 2010).

According to the Council of Europe's Commissioner for Human Rights (2009), States should eliminate all discrimination against migrant workers from both law and practice, including inappropriate restrictions on ownership, mortgages, access to social housing and eligibility for housing allowances. Migrants often have to wait a long time for their housing allowances. Internationally, wait times of several years has been viewed as acceptable. The ECSR has, nevertheless, stated that the waiting period must not be excessive and pointed out that 1) housing benefit is an individual right, 2) all qualifying households must receive it in practice, and that 3) legal remedies must be available in case of refusal (Hammarberg, 2009). While irregular migrants and temporary residents are, in principle, excluded from the protection of the European Social Charter, anyone in urgent need due to lack of resources, as well as children of undocumented migrants, are required to be supported with temporary measures according to Article 13.4 (ECSR, 2003). As noted by Ryszard Cholewinski (2005), the minimum guarantees for irregular migrants in the field of housing and protection are:

- Housing provision should not be denied to irregular migrants on the grounds of their unauthorized status, particularly given the importance of the right to adequate housing for the enjoyment of other civil, political, economic and social rights.
- While states might be justified in denying long-term housing provision to those irregular migrants who can be removed from the country or rejected asylum seekers who have exhausted their rights of appeal, such migrants must nevertheless be afforded a minimum level of housing assistance commensurate with conditions of human dignity. The provision of assistance in such circumstances should not be interpreted in a way that is tantamount to the detention of irregular migrants.

Moreover, in relation to the Roma and Travellers, the Commissioner for Human Rights of the Council of Europe refers to Recommendation Rec(2005)4 of the Committee of Ministers, which although permitting the establishment of legal standards applying to public services (water, electricity, street cleaning, sewage systems, refuse disposal, and so on) states that these should equally apply to Roma settlements and camp sites, and provides a detailed guide on improving the housing conditions of Roma and Travellers. For example, it proposes that the public authorities should make every effort to resolve the undefined legal status of Roma settlements as a precondition for further improvements. Where Roma camp illegally, public authorities should use a proportionate response. This may be through negotiation or the use of legal action. However, they should seek, where possible, solutions that are acceptable for all parties in order to avoid excluding Roma from access to services and amenities to which they are entitled as citizens of the state. In cases of forced evictions, it explains how States Party must make sure that evictions are justified and are carried out in conditions that respect the dignity of the persons concerned, and that alternative accommodation is available.

It is important to point out that, as noted by the Commissioner for Human Rights of the Council of Europe, the arbitrary destruction of property can violate Article 8 (right to respect for private and family life and home) and Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights. Furthermore, the Committee of Ministers' 20 Guidelines on Forced Return of 2005 provides standards on procedural safeguards that member states should respect when proceeding to forced return, and guideline no. 3 states that "the collective expulsion of aliens is prohibited", while Article 4 of Protocol No. 4 to the ECHR prohibits the collective expulsion of aliens. While the European Convention does not guarantee aliens the right to enter or reside in a given country, the removal of a person from a country where close members of his or her family live may infringe on his or her right to respect for family life as guaranteed by the Convention (Hammarberg, 2012).

CONCLUSION

This chapter had examined different examples of penalisation and criminalisation of homelessness in European countries. We have seen how social policy, which was likely created to prevent or respond to homelessness, can also be used as an instrument for penalisation, segregation and even deportation. There is a gap between international and European law, between national standards and States' commitments to implement the right to housing to eliminate discrimination on the one hand, and national policies concerning homelessness, Roma, Travellers and irregular migrants on the other. States across Europe have made commitments to respect human rights; they should be held responsible for policies and practices that penalise and criminalise homelessness, because these violate human rights. Policies for allocating social housing or shelter space in France, England and The Netherlands must respect human rights and not be used as a means to discriminate against and exclude people who clearly have housing needs. Furthermore, we can conclude that homeless services must not be systematically used to compensate for inconsistent migration policies that lead people to situations of destitution and homelessness when, in fact, in many countries this reality causes tremendous stress on the services, their staff and the local homeless population. Furthermore, access to homeless services should not be used as a means to regulate migration.

REFERENCES

Aranda, M.; Chaves, G.; Moreno, M.; Posada, JD.; Rivas, C. and Rivera. I (2005): El Populismo Punitivo. Análisis de las reformas y contra-reformas del Sistema Penal en España (1995-2005). University of Barcelona Observatory on the Criminal Justice System and Human Rights

Bernard, N. and Romainville,C. (2010): "Travellers' Right to Housing in Belgium" in Housing Rights of Roma and Travellers Across Europe. pp 8-11. Housing Rights Watch

Busch-Geertsema, V. and Fitzpatrick, S. (2008): "Effective Homelessness Prevention? Explaining Reductions in Homelessness in Germany and England". European Journal of Homelessness. Volume 2, December. EOH. FEANTSA

Cahn, C. and Guild, E. (2008): Recent Migration of Roma in Europe. OSCE High Commissioner on National Minorities and of the Council of Europe Commissioner for Human Rights.

Chapman, A. and Russell, S. (2002): Core Obligations: Building a Framework for Economic, Social and Cultural Rights. Intersentia, Mortsel.

Cholewinski, R. (2005): Study on obstacles to effective access of irregular migrants to minimum social rights. Council of Europe Publishing.

DCLG (2006): Homelessness Prevention: A Guide to Good Practice (London: DCLG). Department for Communities and Local Government.

Devlin, R. and Mckenna, S. (2009): No Home from Home. Homelessness and People with No or Limited Access to Public Funds. Northern Ireland Human Rights Commission

ECSR (2003): International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, Decision on the merits.

FEANTSA (2010): Ending Homelessness: A Handbook for Policy Makers. FEANTSA

FRA (2009): Housing conditions of Roma and Travellers in the European Union Comparative report. European Union Agency for Fundamental Rights

Hammarberg, T. (2009): Recommendation of the Commissioner for Human Rights on the implementation of the right to housing. Council of Europe Comissioner for Human Rights. Strasbourg. 30 June, CommDH (2009)5.

Hammarberg, T. (2012): Human rights of Roma and Travellers in Europe. Council of Europe Publications

Kamp, W. (2010): "The development of the National Strategy Plan for Social Relief in the Netherlands". In FEANTSA (2010): Ending Homelessness: A Handbook for Policy Makers. FEANTSA

Kenna, P. (2010): "Can housing rights be applied to modern housing systems?". International Journal Of Law Of The Built Environment, 2 (2):103-117.

Mckenna, S. (2010): "The Northern Ireland Example. Key Question 5: To what extent should people be able to access homeless services irrespective of their legal status and citizenship?" Experts Contributions Consensus Conference on Homelessness. Belgian Presidency of the Council of the European Union

Pawson, H., Netto, G., Jones, C., Wager, F., Fancy, C. & Lomax, D. (2007): Evaluating Homelessness Prevention. (London: Communities and Local Government).

Perl, C. (2010): "Equality in Public and Social Housing Allocation". Homelessness and migration in Europe: finding responses. Homeless in Europe - Summer. FEANTSA. Brussels

Pleace, N.; Teller, N and Quilgars, D. (2011): Social Housing Allocation and Homelessness. EOH Comparative Studies on Homelessness. Nº 1. FEANTSA Brussels

Sepúlveda, M. (2011): "La extrema pobreza y los derechos humanos". General Assembly of the United Nations. A/66/265. 4 August 2011

Shelter (2007) Rights and Wrongs : The Homelessness Safety Net 30 Years On. (London: Shelter).

Skogly, S. (1990): "Human Rights reporting: the Nordic experience", HRQ. Vol 12, p. 513

Sprakel, J. (2010): "The right to shelter for irregular migrants – a fact-based approach in the Netherlands". Homelessness and migration in Europe: finding responses. Homeless in Europe - Summer. FEANTSA. Brussels

Van Parys, R. and Verbruggen, N. (2004): Report on the housing situation of undocumented migrants in six European countries: Austria, Belgium, Germany, Italy, The Netherlands and Spain. PICUM

Wacquant, L. (2000): Las cárceles de la miseria. Alianza ensayo. Madrid

Wacquant, L. (2010): Castigar a los pobres: el gobierno neoliberal de la inseguridad social. Barcelona: Gedisa, pp. 385-387 and 415

Wacquant, L. (2011): "The punitive regulation of poverty in the neoliberal age". Governing poverty: risking rights?. Open Democracy 5050

Wilcox, S.; Fitzpatrick, S.; Stephens, M.; Pleace, N.; Alison, N. and Rhodes, D. (2010): The impact of devolution: Housing and homelessness. York: Joseph Rowntree Foundation

Young, K. (2008): "The minimum core of economic and social rights: a concept in search of content". Yale Journal of International Law, Vol. 33 N0 1, pp 113-76

MEAN STREETS

A REPORT ON THE CRIMINALISATION OF HOMELESSNESS IN EUROPE

Criminalising and penalising homeless people for carrying out life-sustaining activities in public because there is no where to go is a problem across the EU. Policies and measures, be they at local, regional or national level, that impose criminal or administrative penalties on homeless people is counterproductive public policy and often violates human rights.

Housing Rights Watch and FEANTSA have published this report to draw attention to this issue. This report brings together articles from academics, activists, lawyers and NGOs on the topic of human rights and penalisation. Divided into three main sections, the report provides an important theoretical and historical background, before highlighting examples of penalisation across the EU, and finally suggesting measures and examples on how to redress this dangerous trend.

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