



# HOUSING RIGHTS WATCH

**Housing Rights and  
the EU Charter of  
Fundamental Rights**

## Housing Rights and the EU Charter of Fundamental Rights

The EU's Charter of Fundamental Rights recognises a range of personal, civil, political, economic and social rights of EU citizens and residents, enshrining them in EU law. The Charter does not include a specific right to housing, but there is an important right to housing assistance:

### Article 34.3 EUCFR

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

The incorporation of this Charter into the Treaty of Lisbon gives legal effect to the "right to social and housing assistance" across Europe.

The paragraph 34.3 draws on Article 13 of the European Social Charter and Articles 30 (includes an obligation to promote effective access to a range of services, including housing) and 31 (to promote access to housing of an adequate standard, to prevent and reduce homelessness with a view to its gradual elimination, and to make the price of housing accessible to those without adequate resources) of the revised Social Charter. These articles can provide clarification on the obligations of the States because there is important jurisprudence in this area for the interpretation of Article 34.3 of the EU's Charter of Fundamental Rights.

## The role of the European Court of Justice in developing Housing Rights

The European Court of Justice recognises that the international human rights treaties are another source of fundamental rights in EU law and ensures that their interpretation and application is observed consistently across EU States. What can the European Court of Justice do? It can hear 5 kinds of cases:

- Requests for a preliminary ruling - National courts can request that ECJ interpret any EU provision.
- Actions for failure to fulfill an obligation – The Commission or an EU Member State can start these proceedings if it believes that a member country is failing to fulfill its obligations under EU law.
- Actions for annulment – Can be used by individuals who want the Court to cancel a particular law because it directly and adversely affects them.
- Actions for failure to act – Member States, other Community institutions (e.g. the European Parliament, etc.) and individuals or companies can lodge a complaint against EU institutions for failing to make decisions required of them.
- Direct actions – Any person or company who has suffered damage as a result of the action or inaction of the Community can bring an action seeking compensation.

The "**preliminary ruling procedure**" would request clarification on the nature and extent of the obligations set out in the Charter in relation to the right to social and housing assistance. Since decisions of the ECJ are binding on all national courts within the EU this is viewed as a very efficient way of developing housing rights for homeless people across Europe.

## How does the preliminary ruling work?

**Who?** Proceedings before the European Court of Justice start with a written phase followed by an oral phase. The active participation of Counsel for parties to the proceedings concludes with the hearing at which oral argument is presented. It is for the national court alone to decide whether to refer a question to the European Court of Justice for a preliminary ruling, whether or not the parties to the main proceedings have requested it to do so. All national courts must therefore refer a question to the European Court of Justice when they have doubts about the validity of such an act, stating the reasons for which they consider that that act may be invalid.

**When?** A national court or tribunal may refer a question to the European Court of Justice for a preliminary ruling from the European Court of Justice as soon as it finds that a ruling on the point or points of interpretation or validity is necessary to enable it to give judgment. It is, however, desirable that a decision to seek a preliminary ruling should be taken when the national proceedings have reached a stage at which the national court is able to define the factual and legal context of the question.

**How?** Prepare a short description of the issue (maximum 10 pages) and submit it to a national court. Housing Rights Watch can help you in this process if you do not know how to submit your request in your country. To the best of your ability, please provide the following information:

- A brief account of the dispute and the relevant findings of fact
- Identify the relevant national case law
- Identify the EU law provisions relevant to the case
- Explain the reasons which prompted the national court to raise the question of the interpretation or validity of the EU law provisions, and the relationship with national provisions
- Include a summary of the core arguments of the parties to the main proceedings

## How can Housing Rights Watch help you?

Housing Rights Watch is a European network of interdisciplinary groups of associations, lawyers and academics from various European countries who are committed to the promotion, protection and fulfillment of the right to housing to all.

Few homelessness cases have reached the European Court of Justice of the EU, although the European Court of Human Rights (ECHR) has considered homelessness issues in the context of State obligations to prevent inhuman and degrading treatment.

Housing Rights Watch is looking for case law at local and national level because we hope to begin the process of Preliminary Reference Procedure to enable individuals in national courts to seek a ruling from the ECJ on the interpretation of the obligations on States constrained in the Charter of Fundamental Rights.

***Send us your cases and questions!***

housingrightswatch@gmail.com

You can visit our section on Instruments and Mechanisms relating to Housing Rights

<http://feantsa.horus.be/code/EN/pg.asp?Page=677>

You can also visit our database of Decisions of the European Court of Human Rights relating to housing rights

<http://feantsa.horus.be/code/EN/pg.asp?Page=695>

For further information about Housing Rights Watch please contact: [samara.jones@feantsa.org](mailto:samara.jones@feantsa.org)

***“There is no right without a remedy”***



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