

Statement at IUT Tenants Day Conference – The right to housing – 5 October 2009, Friedrich Ebert Stiftung, Brussels

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Good morning. I would like to transmit to you the greetings of Mr Thomas Hammarberg, the Commissioner for Human Rights of the Council of Europe, for this Tenants' Day Conference. Although it is true that housing has become a marketable and valuable asset in addition to being a home, human rights are not silent about housing questions. Housing cannot simply be reduced into an economic issue. In fact, in the current difficult situation housing rights are gaining a growing relevance. These rights can inspire and develop meaningful and effective responses to homelessness, and promote equality and non-discrimination in housing systems. It is with this aim in mind that the Commissioner issued, in June this year, a Recommendation on the implementation of the right to housing. The Recommendation gives guidance to member states on the ways they can satisfy their international obligations regarding housing rights.

Housing rights are now viewed as an integral part of economic, social, and cultural rights within the international and European human rights instruments. The UN Covenant on Economic, Social and Cultural Rights, the European Convention on Human Rights, and the revised European Social Charter are the core international instruments for the right to housing. The most recent international development regarding these rights is the new Optional Protocol to the cited UN Convention, which will enable individuals to lodge complaints with the UN Committee on Economic, Social and Cultural Rights concerning violations of that convention. 29 countries signed this Protocol during the UN General Assembly session in New York last month.

The expression 'right to housing' may be considered to refer to a cluster of more specific rights related to adequate housing and living conditions but, in general terms, it may be defined as 'the right to live somewhere in security, peace and dignity'. In common with other rights, the right to housing derives from the inherent dignity of the human person. It is of central importance to the enjoyment not only of other social, economic and cultural rights such as rights to water, food, health, education and work, but also to the effective enjoyment of civil and political rights such as rights to privacy and family life. In fact, without adequate housing, it would be very difficult to exercise the right to privacy and family life at all.

The UN Covenant on Economic, Social and Cultural Rights (ICESCR - Article 11§1) includes "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 UN Committee on Economic, Social and Cultural Rights has set out the minimum core guarantees which, under public international law, are vested in all persons. These are legal security of tenure, availability of services, materials and infrastructure, affordable housing, habitable housing, accessible housing, housing in a suitable location as well as housing constructed and sited in a way which is culturally adequate. The Committee has also reminded states of their obligation to refrain from forced evictions and to ensure that the law is enforced against their agents or third parties who carry out forced evictions.

The revised European Social Charter (ESC) of 1996 includes a specific provision on the right to housing in its Article 31. Under this Article, states have undertaken to take measures:

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

The conditions of appropriate housing are that housing is accessible and qualitatively of adequate standard, no one is left homeless and that housing costs are affordable. Moreover, Article 31 of the revised ESC should be implemented without discrimination in accordance with the Charter's Article E. There is a procedure for collective complaints whereby the European Committee of Social Rights can decide on violations against the Social Charter in addition to its regular country monitoring procedure.

The European Convention on Human Rights (ECHR) contains many civil and political rights provisions which are being indirectly interpreted in the development of housing rights. Article 2 (right to life) may be applicable in cases related to the requirements of safety and health in terms of habitability. Under Article 3 (prohibition of torture), a state has positive obligations to prevent a person suffering inhuman and degrading treatment also with reference to housing or living conditions. Article 8 (right to respect for private and family life) has particular significance in relation to housing with its protection of respect for the home. Furthermore, Articles 6 (right to a fair trial), 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the ECHR and Article 1 (protection of property) of its Protocol No. 1 can also be invoked in cases involving housing rights. The recent judgment of the European Court of Human Rights in the case of *Olaru and others v. Moldova* of 28 July 2009, confirms that entitlements to social housing can be considered as property in the sense of Protocol No. 1, under certain conditions.

States have undertaken to aim at the full realisation of the rights concerned, to work towards the progressive realisation of these rights and to do so by all appropriate means. Normally, moving towards full realisation of rights will require the adoption of a national housing strategy which incorporates targets to be achieved and effective monitoring of the situation with respect to housing rights. The prevention of homelessness, including protection against forced evictions, should be one of the key objectives of such a strategy.

The international obligations must be recognised in appropriate ways within the domestic legal order. Remedies or means of redress must be available to individuals or groups aggrieved by the denial of housing rights. Furthermore, governmental accountability must be ensured. An important aspect is that national governments should engage in oversight of the actions of regional or local authorities, or other agencies, if they have been conferred responsibilities for the realisation of housing rights. Individual justiciability, that is the possibility for individuals to enforce their rights through courts or other legally binding means, is another means of making the right to housing a reality. Yet, the individual enforcement of housing rights should be accompanied by other measures aimed at providing sufficient accommodation to meet the demand from persons classified as homeless.

Housing rights must be implemented in full compliance with the principle of non-discrimination, as stipulated in the relevant human rights instruments. Any positive steps that states take to improve the housing situation of persons within their jurisdiction should be carried out on a non-discriminatory basis. Nevertheless, positive measures for

disadvantaged groups are often necessary to ensure that rights are genuinely available to all. Such groups of people may include, among others, people with disabilities, young people and families, older persons, migrant workers, Roma and Travellers, women victims of violence and internally displaced persons.

In summary, I would like to outline the recommendations issued by the Commissioner. There are 9 of them. It should be noted that they constitute advice to member states but are not legally binding on them.

1. Enact specific legislation which clarifies how the housing rights guaranteed by international law are to be made effective in a national jurisdiction without discrimination. National laws should set out in detail housing rights, identify those who are responsible for their implementation at different levels, and provide for effective remedies when they are violated. Those countries which have not yet done so should ratify the revised European Social Charter, its Article 31 on the right to housing as well as its Additional Protocol providing for a system of collective complaints.

2. Include housing rights in the scope of general non-discrimination legislation both in the public and private sectors and specify that positive measures are justified in order to promote full and effective equality provided that there is an objective and reasonable justification for such measures. Those countries which have not yet done so should ratify Protocol No. 12 on the general prohibition of discrimination to the European Convention on Human Rights.

3. Establish minimum standards in all areas of housing provision for accessibility, adequacy and affordability in accordance with the European standards developed by the European Committee of Social Rights and the European Court of Human Rights.

4. Prevent and reduce homelessness through general and targeted policy measures designed to promote access to housing. Such measures include legal protection of tenants against unfair and disproportionate contractual conditions, indiscriminate termination of contracts and forced eviction, as well as the availability of a sufficient stock of rental housing, temporary shelters and support or service housing to provide housing for disadvantaged and vulnerable groups.

5. Adopt and implement a national housing strategy which incorporates targets to be achieved for the realisation of housing rights to an extent consistent with the maximum use of available resources. A national housing strategy should also apply a gender perspective, identify disadvantaged and vulnerable groups and include positive measures for ensuring their effective enjoyment of the right to housing.

6. Adopt anti-violence provisions in housing legislation and policies and ensure that domestic violence laws include provisions to protect women's right to housing, including the right to privacy and security.

7. Enable individual justiciability of the right to housing. The individual enforcement of housing rights should be accompanied by other measures aimed at providing sufficient accommodation to meet the demand from persons classified as homeless.

8. Engage in oversight and regulation to ensure that national, regional and local authorities as well as private bodies fulfill their respective obligations in implementing the

right to housing. The authorities which have responsibilities in the field of housing rights should coordinate their activities to optimise results for the realisation of rights.

9. Establish a monitoring mechanism for the ongoing collation of data, including disaggregated data, and the development of indicators on the implementation of housing rights as well as for recording violations taking place. The process of monitoring should involve national human rights structures, social partners, relevant NGOs and housing rights advocacy agencies.