



International Union of Tenants

FEANTSA'S ONGOING COLLECTIVE COMPLAINTS

–The cases of Czech Republic, Belgium and Spain

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CZECH REPUBLIC, BELGIUM AND SPAIN COLLECTIVE COMPLAINTS



The European Social Charter is a treaty made by the Council of Europe that guarantees fundamental social and economic rights as a counterpart to the European Convention on Human Rights, which refers to civil and political rights. This Charter emphasizes the protection of the most vulnerable people without discrimination, and it also serves as a point of reference in European Union law; most of the social rights in the EU Charter of Fundamental Rights are based on the relevant articles of the Charter. The Charter is therefore seen as the **Social Constitution of Europe**. The first version of the Charter was drafted in 1961, then it was revised and adopted in 1996; 43 out of the 46 member States of the Council of Europe ratified either the 1961 Charter or the Revised Charter. For the States who have accepted it, the reporting system is complemented by the Additional Protocol of 1995 providing for a system of collective complaints. In this framework, the States' behavior is monitored by the European Committee of Social Rights by two mechanisms:

- through collective complaints lodged by the social partners and other non-governmental organizations,

- through national reports drawn up by States Parties.

The collective complaints procedure has strengthened the role of the social partners and non-governmental organizations. In fact, they are enabled to directly apply to the European Committee of Social Rights for rulings on possible violations of the Charter in the Countries concerned. **If a complaint is considered admissible by the European Committee of Social Rights, it adopts a decision on the merit of the complaint.** This decision establishes whether a State's law and/or practice is or is not in compliance with one or more provisions of the Charter. The decision is forwarded by the Committee to the parties and, given its follow-up, to the Committee of Ministers of the Council of Europe.

This paper analyses three ongoing collective complaints, which were launched by FEANTSA, the European Federation of National Organizations Working with the Homeless¹. Its work is mainly

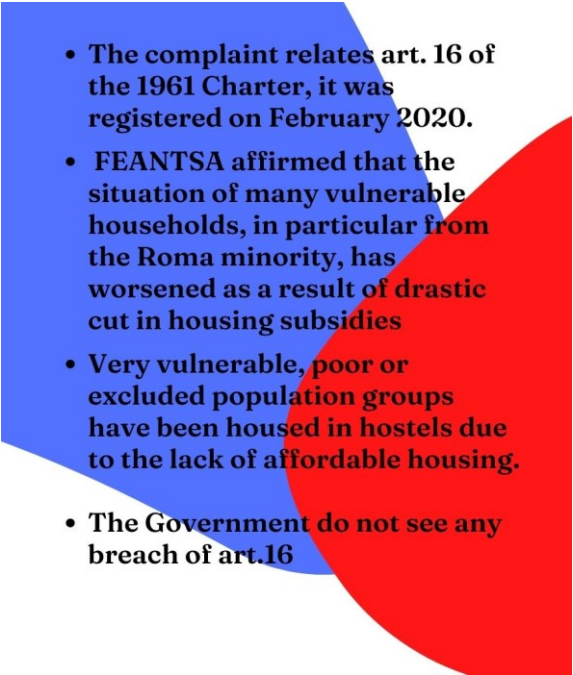


based on the European Social Charter. FEANTSA has lodged

several collective complaints over the past few years, but the focus of this analysis will be on the ones still ongoing against Czech Republic, Belgium, and Spain.

¹<https://www.feantsa.org/en>

FEANTSA vs CZECH REPUBLIC N.192/2020²

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- **The complaint relates art. 16 of the 1961 Charter, it was registered on February 2020.**
 - **FEANTSA affirmed that the situation of many vulnerable households, in particular from the Roma minority, has worsened as a result of drastic cut in housing subsidies**
 - **Very vulnerable, poor or excluded population groups have been housed in hostels due to the lack of affordable housing.**
 - **The Government do not see any breach of art.16**

The complaint was registered on 19 February 2020. It relates to Article 16 of the 1961 Charter which states that *"with a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the 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"*³; read also in conjunction with the non-discrimination clause in the Preamble to the Charter: *"the enjoyment of social rights should be secured without discrimination on grounds of race, color, sex, religion, political opinion, national extraction or social origin."*⁴ FEANTSA assessed that, following the implementation of new housing legislation and policy in the Czech Republic, the situation of many vulnerable households, in particular from the Roma minority, has worsened as a result of drastic

cuts in housing subsidies, threats, and risks of eviction, social and racial discrimination against these households. For what concerns Czech law, the regulation entails:

1. The System of Assistance for those in Material Need Regulated by Act no. 111/2006 Coll.
2. The Civil Code, in force as of 1 January 2014, regulates rental tenancies and the grounds for termination of rental contracts.
3. The "Strategy for Preventing and Tackling Homelessness Issues in the Czech Republic until 2020" was adopted by the government in August 2013.
4. The Czech Republic Social Housing Concept 2015-2025.

Moreover, the new civil code entails that if the landlord terminates the rental agreement, they are not obliged anymore to provide tenants with substitute housing. If the rental agreement comes to an end following the terms and the tenant does not vacate the premises, the landlord may request a court order to clear the premises. So, the eviction process may start if the tenant does not leave the house after the termination of the rental contract. Such an eviction shall be carried out even if it makes the tenant homeless. Additionally, due to the lack of affordable housing, very vulnerable, poor, or excluded population groups have been housed in "hostels": flats or rooms in private buildings where residents do not have standard rental contracts, do not receive a local residence permit, and frequently pay exorbitant rents for small rooms or low-quality flats.

² https://www.coe.int/en/web/european-social-charter/pending-complaints/-/asset_publisher/lf8ufoBY2Thr/content/no-191-2020-european-federation-of-national-organisations-working-with-the-homeless-feantsa-v-czech-republic?inheritRedirect=false&redirect=https%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2FEuropean-social-charter%2Fpending-complaints%3Fp_id%3D101_INSTANCE_lf8ufoBY2Thr%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-4%26p_p_col_count%3D1

³ Art.16 European Social Charter (1961)

⁴ Non-discrimination clause, Preamble, European Social Charter



Contrary to this, people living in hostels are usually not granted these statutory protections, since temporary accommodation agreements are concluded for shorter terms and are intended to secure temporary lodging only. Concerning this situation, FEANTSA assessed that the use of temporary contracts by hostels generates insecurity of tenure and increases the risk of eviction and, therefore, is not compatible with the obligations of the Charter. The threat of eviction experienced by Roma people, in some cases by whole neighborhoods, is particularly alarming.

The Czech Republic is among the countries where housing costs represent the largest proportion of poor households' disposable income, reaching 46%. Indeed, the State benefits for households in a difficult financial situation are divided into **housing allowance and housing benefits**. Housing allowance is a state support provided to owners or tenants, but only if they have a Registered Permanent Residence (RPR). Thus, people living in other forms of accommodation or a place other than their RPR might be excluded from the possibility of applying for this State support. While housing benefit is a secondary source intended only for those who does not qualify for housing allowance, or who does not have enough funds to cover their housing costs despite receiving other State support (including housing allowance). Housing benefit is intended to have more of a motivational role, so its allocation and amount are conditioned by certain requirements, e.g. the

applicant's efforts to find suitable housing or a job. However, applicants living in non-residential premises such as hostels or public lodgings are entitled to receive housing benefit only in special cases. Consequently, the relevant legislation does not ensure an adequate standard of housing quality.



Furthermore, in 2015, an enormous increase in the number of people living in hostels was identified, in comparison with 2006. Most persons living in "socially excluded localities" both in 2006 and 2015 were Romani. FEANTSA, indeed, considered that the worsening situation of geographical and residential segregation in the Czech Republic, despite long-term international and European concern regarding this matter, merited the attention of the Committee. Plus, the policy on the designation of geographical zones where residents are not eligible for emergency social assistance and the resulting practice of excluding certain categories of people from residing in those areas, results from indirect discrimination against certain groups of people, particularly the most vulnerable groups. Under Article 16, the Czech Republic must therefore promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies, and include essential services. Moreover, the obligation to promote and provide housing extends to ensuring the enjoyment of security of tenure, which is necessary to ensure the meaningful enjoyment of family life in a stable environment. This obligation extends to ensuring protection against unlawful eviction. The problem is that the Government considers this complaint inadmissible *ratione materiae*. "As such, we respectfully suggest that the Government's admissibility objections be

dismissed, and indeed that the Committee recognize the intrinsic link between rights to freedom of movement, rights to establish with equal dignity in a given municipality, and the right to housing as established in law," FEANTSA replied. Indeed, FEANTSA welcomed the efforts of the Respondent State to provide the Country with a legal framework as a basis for ambitious policies. But it is crystal clear that the state policy did not follow the strategic plans adopted. Emergency housing has proved insufficient in the long run.

The implementation of the legislation is insufficient and keeps being postponed. The Czech Republic thus lacks the necessary legislative and financial framework for social housing that could lead at least to steady progress toward achieving the goals laid down in the Charter. Finally, in response to the letter of July 22, 2021, the Czech Government maintains its position expressed in their initial observations of 28 March 2021. An answer from the Committee is on the waiting.

FEANTSA vs BELGIUM N.203/2021

- **The complaint relates art. 11-16-30- 19§4.c-17-E, it was registered on December 2021**
- **FEANTSA affirmed that the Flemish housing policy does not sufficiently succeed in improving the difficult housing situation of many families and homelesses**
- **Main issues: unfair and ineffective housing policy, no balanced housing market, social housing is not decent and discriminatory, no monitoring of availability, accessibility, evictions.**
- **The Government did not contest the complaint**

The complaint was registered on 17 December 2021. It relates to Articles **11** (the right to protection of health), **16** (the right of the family to social, legal, and economic protection), **30** (the right to protection against poverty and social exclusion), **19§4** (the right of migrant workers and their families to protection and assistance), **17** (the right of children and young persons to social, legal and economic protection) and **E** (non-discrimination) of the revised European Social

Charter. FEANTSA affirmed that the Flemish housing policy does not sufficiently succeed in improving the difficult housing situation of many families, especially for the most vulnerable residents such as homeless families with children, migrant workers, and Travellers, in violation of the above-mentioned provisions of the Charter. This complaint is directed against the Belgian State. Given the State's federal nature, however, the competence of housing policy is a regional matter. This collective complaint is aimed at the situation in Flanders, where, in recent decades, housing policy made too little progress in improving the housing situation of Flemish households, in particular for the most vulnerable households.

For what concerns Belgium's housing policy, it is rooted in the late 19th century. It consists of three positions: owner-occupant, social tenant, and private tenant. Homeownership in Belgium is unequally distributed across various social-economic profiles. Moreover, due to a lack of financial resources, most people do not have access to homeownership, are ineligible for social rental housing, and cannot find private rental housing. Therefore, they are defined as homeless. FEANTSA considered Belgium's housing policy unfair and ineffective. Indeed, studies have also provided clear evidence of the "Matthew effect"⁵: 53% of the total amount of all housing subsidies

⁵ Matthew's effect is sometimes summarized by the adage "the rich get richer, and the poor get poorer". The concept applies to matters

of fame or status but may also be applied literally to the cumulative advantage of economic capital.

goes to the 40% highest income group. Additionally, even if the support does occasionally convince someone to buy a home, there is a danger of 'risky' ownership, leading to affordability problems. The housing policy thus inherently provides an advantage to the stronger actors in society, while assigning no priority to those in greatest need of housing. There are also negative effects from a social point of view in other areas, including the economy, mobility, and sustainability.

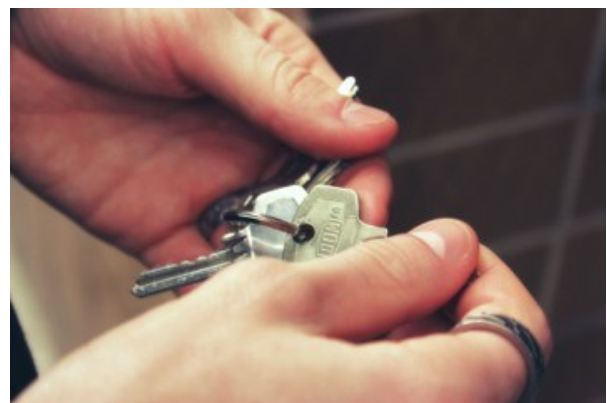


In the merit of social housing, the Flemish authorities have provided two types of social lessors: social housing corporations and social rental agencies. The difference between these two entities is that social rental agencies lease houses on the private market to sub-let them to the target audience under social terms and conditions, while social housing corporations develop and manage their housing stock. From within the framework of fundamental rights, it can be stated that the provision of housing by the government is unable to offer the most sustainable guarantees in terms of access, housing quality, housing security, affordability, and adaptability.

However, another problem is linked to the waiting lists for social housing and their waiting periods. Both allocation systems also have several 'priority rules', which create additional priorities within the group of prospective tenants in need of housing support. It can be also stated that the vision that the Flemish authorities have of social housing is departing more and more from the notion that decent housing is a basic condition for social inclusion and social participation. In the field, tenant, welfare, and poverty organizations have highlighted the fact that psychosocial problems

are often at the root of evictions due to neglect or nuisance, thus actually indicating a need for extensive counseling. For highly vulnerable individuals (e.g. those who combine low income with psychosocial vulnerability), the chance of finding a home on the private rental market is also small. Given the lack of realistic alternatives, this measure even threatens to lead to homelessness.

Nevertheless, the Flemish legislature, to strengthen the housing security of tenants and their families, stipulated a standard rental period of nine years in housing rental agreements. At least on paper, this would provide tenants with housing security for a longer period, without running the risk of being evicted each time. Practical experience has unfortunately shown that these objectives are largely undermined by the frequent use of short-term contracts, which the legislation allows only as an 'exception'. Then, on the 1st of June 2020, the "Fund to Combat Evictions" was created, but its impact is too limited. For other aspects of the fundamental right to housing—availability, accessibility (including the prohibition of discrimination), and prevention of evictions—the Flemish authorities conduct little or no monitoring. Finally, the Flemish government did not contest the reception of the complaint.



In September, the Belgian government declared the complaint admissible. FEANTSA will have to respond by the 22nd of December.

FEANTSA vs. SPAIN n.206/2022

- The complaint relates art. 31-16-17-30-23-11-15-20-27.
- It concerns the ongoing power outage occurring in Sector 5 and 6 of the shantytown of the Cañada Real Galiana in Madrid, which began in October 2020.
- FEANTSA alleges that Spanish law is not enough to protect and guarantee a decent life to the Cañada Real population. It should be implemented.
- The Spanish State considers that the issue raised by the complainants fails to meet the factual requirement of immediate emergency.

The complaint was registered on the 2nd of March 2022. It concerns Articles **31** (the right to housing), **16** (the right of the family to social, legal, and economic protection), **17** (the right of children and young persons to social, legal, and economic protection), **30** (the right to protection against poverty and social exclusion), **23** (the right of elderly persons to social protection), **11** (the right to protection of health), **15** (the right of persons with disabilities to independence, social integration, and participation in the life of the community), **20** (the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex), **27** (the right of workers with family responsibilities to equal opportunities and equal treatment) and to **Article E** (non-discrimination) in conjunction with each of the concerned provisions of the Revised European Social Charter. It relates to the ongoing power cut occurring in Sectors 5 and 6 of the shantytowns of Cañada Real Galiana in Madrid, which started in October 2020 and continues to this day. Cañada Real is an irregular, lineal neighborhood of unauthorized constructions located approximately 15 kilometers from the center of Madrid. Informally divided into six sectors, Sectors 5 and 6 are those concerned by the complaint and account for approximately 4,500 inhabitants, of which around 1,800 are children. UFD-Naturgy -

the electricity supplier- argued that intensive marijuana plantations triggered safety devices installed on the electric infrastructure and were thus causing a permanent blackout in the network. Nevertheless, this explanation appears highly unsatisfactory, and it cannot be a reason to deprive people with no electricity. The power disconnection has had serious impacts on the lives of people concerned by the complaint. It has resulted in severe medical conditions and in the worsening of pre-existing health issues, such as respiratory infections, carbon monoxide poisoning, burns, rheumatic conditions, domestic accidents, health problems in newborns, comorbidity complications from exposure to cold, and anxiety and depression. The elderly, the persons with disabilities, and the persons belonging to vulnerable groups of population – such as Roma have also been disproportionately impacted by the electricity deprivation.



In the merit of the Spanish law concerning the situation, it can be cited the following:

- **Law 2/2011 on the Cañada Real Galiana.**
- **Social Framework Agreement of 2014:** “Social Framework Agreement on the Cañada Real”, which set out public policy objectives on social and legal matters, as well as on issues related to security, urbanism, and housing.
- As a continuation of and replacement to the “Social Framework Agreement”, on 17 May 2017 the State, the Region of Madrid, the city councils of Madrid, Coslada, and Rivas-Vaciamadrid signed the **“Regional Pact for the Cañada Real Galiana”** to elaborate a strategy for the rehousing of the population that, for

territorial, environmental, safety or health reasons, cannot continue living in their dwellings or substandard housing.

- **Commissioner for the Cañada Real:** coordinate the consultation process between the authorities and the affected population through their associations.
- **Creation of an Inter-ministerial Commission in 2021:** The Commission is composed of the Ministry of Social Rights, the Ministry of Transport, Mobility and Urban Agenda, and the High Commissioner for Child Poverty. The team is coordinated by the Government Delegation in Madrid. It focuses on re-housing as a solution to the conflict in the Cañada Real but no particular measure to address power outage has been implemented so far.
- **Re-housing program for Sectors 4, 5, and 6 (December 2021):** the Government issued a direct grant to the Councils of Madrid city and Rivas-Vaciamadrid for the implementation of re-housing programs for families in a situation of extreme social vulnerability in Sectors 4, 5 and 6 of the Cañada Real.

Four out of five complainants are international non-governmental organizations with participatory status to the Council of Europe: Defence for Children International, Feantsa, Magistrates Europeens Pour La Democratie Et Les Libertés, International Movement ATD Fourth World, Confederacion Sindical De Comisiones Obreras.

The Spanish State considered that the issue raised by the complainants to provide access to electricity for Sector 5 & 6, can only be assessed after a detailed examination of the merits of the complaint. Therefore, it is not appropriate to adopt a measure such as the one requested on enabling access to power supply - which, moreover, would imply imposing a direct supply obligation on a private company, unrelated to this complaint. The Committee has underlined that immediate measures can only be exceptionally ordered when they are necessary to avoid the risk of serious

irreparable harm and to ensure effective respect of the European Social Charter. Indeed, the complaint fails to meet the factual requirement of an immediate emergency.



After a careful reading, at the end of October, the Spanish government declared the complaint admissible. But, to this day no measures have been taken.

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