

# Security of Tenure European Consultation 26th June

## *Key Issues*

### **Foreclosures**

Those foreclosed on often retain debt due to property value loss. A law on foreclosures was passed in Spain but did not respond to social demands. European Court of Justice decision also provided impetus for reform but the legislation contains preconditions that are very difficult to conform with and discriminatory. The new law will not make much difference in reality.

### **Conditions of Tenancy and Evictions**

Numbers of evictions from private rental (family) homes is more than 40,000 in Spain in 2012, a number which exceeds the number of foreclosures. This group is largely invisible. The Spanish Government has passed a new reform to deregulate rental market by shortening rental contracts (from 5 to 3 years). The owner is free to increase the rental within this period and to not renew the contract – but owners were generally against this reform. Evictions are now easier to procure (express evictions) but this reform was well received in Spain. Failure to pay rent was criminalised in the same law and those who do not pay are included in a debtor's registry for 6 years but this registry can only be viewed by rental property owners.

Portugal's situation is similar to that of Spain. The private housing market has been recently deregulated to allow for express evictions through an administrative rather than judicial process. Real estate taxes have also been raised on owners who pass this on to tenants leading to a spike in rental prices.

A new bill on housing has just been presented to the National Assembly in France (la loi Duflot otherwise known as le projet de loi pour l'accès au logement et un urbanisme rénové - ALUR) but it does not provide much concrete protection against forced evictions or prevent further commodification of public housing.

Existing legislation in France could assure relative security of tenants but is not well-implemented. Furthermore the right to housing is not included in the Constitution and the right to property generally trumps the right to housing. Most notably, evictions have increased by 100% in the last year, amounting to 200,000 evictions of tenants in the private market and 40,000 people are living in slums (slum areas are also considerably increasing in size around France). By contrast, it is very difficult to evict people from social housing even if they have means to live in private housing and have lived there from a long time. The most vulnerable affected populations include migrants and Roma.

Evictions are also expensive for the state to carry out, particularly as it must generally help those evicted. In some ways it is cheaper to allow them to stay. However, there are also those who profit from evictions such as banks and real estate developers. There are now fewer individual landlords and more property is owned and managed by investment funds and banks etc.

## **Informal Settlements**

There are 600 Roma settlements in Serbia only 10% have access to water and sanitation and social services. Others live in slums or in unsanitary sites. Informal construction is not limited to Roma in Serbia but it is estimated that 1 million buildings have been so constructed. The city of Belgrade does provide housing but these are not adequate. The EU delegation has pressed the city to provide more decent and adequate housing. Relocation and privatisation of public companies, some Roma settlements are on formerly public land that has come under private ownership as a result of privatisation and economic transition. There is no legal duty to continue housing these settlements on private land and there has not been compensation. Document on "Legalisation of informal Roma Settlements:" plan to legalise settlements as a whole and from there legalise structures house by house.

The Turkish government has been in power for 11 years. Since elected they have formed single party government that controls executive branch. The government has completely changed the housing regime in Turkey and does not accept regularisation of informal settlements. There is no parliamentary oversight over the Housing Development Agency, which has become a very powerful agency. Urban renewal projects have been very controversial as there is no public participation and they often lead to the eviction of informal settlements. In case of eviction there is no compensation for tenant households and non-tenant housing dwellers receive only low levels of compensation and are resettled in the city periphery. The Disaster Law conferred more power on the executive.

In Portugal informal settlements are regulated by local governments. The municipalities were supposed to relocate the inhabitants in the 90s and construct social housing but this did not occur in several municipalities. This is occurring now but based on outdated information leading to chaos. Some activists are now trying to claim adverse possession over this property

Insecurity of tenure is mostly addressed through the topic of informal settlements within the UNECE. Insecurity of tenure is increasing due to the financial crisis and foreclosure however even rental tenure can be insecure due to inadequacy of protection. There was UNECE publication in 2009 on informal settlements entitled *Self-made Cities*. The region has very diverse legislation and policies in relation to housing and affordable housing. US and UK however afford less protection for tenants. In countries in transition such as Albania, one case of insecurity of tenure is related to property restitution. The UNECE is currently drafting a strategy on housing which contains one specific target on security of tenure: regulations should be in place to ensure security of tenure for all, notwithstanding the type of tenure. The draft strategy will be put forward for approval by states later this year (in October) and will likely be approved.

Tenancy in informal settlements raises certain issues: a lot of inhabitants of such settlements are tenants and their situation may be precarious and subject to the pressures of gentrification etc.

## **Social Housing**

Social housing disproportionately houses Catholics in Northern Ireland and there are long waiting times. Hostels and shelters have had to step in to provide housing for vulnerable people but such shelters are supposed to provide temporary accommodation and do not consider people staying there as tenants so there is little protection. Demotion orders allow secure tenancies to be converted into insecure tenancies in response to anti-social behaviour and may be open to abuse.

In Portugal, there is only very limited provision of social housing, which is not seen as a right but rather a benefit of the welfare state. There is no overarching national housing policy, rather only local policy exists but local governments have suffered budget cuts in recent years. Social housing rental prices (even those poorly constructed) have also increased to provide revenue for the local government.

European Commission has stated that the provision of social housing which is not targeted at the most vulnerable and open to the population as a whole distorts the single market and contravenes competition regulations. The Netherlands, Denmark and France have been particularly criticised in this regard and have had to review their social housing regimes in response to this criticism. Greece was obliged to close its social housing agency for different reasons.

### **Privatisation of utility companies – impact on the right to adequate housing**

In Portugal, water and sanitation provision has been privatised leading to increases in utility bills and this has a direct impact on the right to housing. Unpaid bills can also be executed in some cases against houses and property. In Serbia, services are cut off after 2-3 months. In some cases, Courts have allowed for the seizure of personal or movable property as repayment. High utility bills may also see a rise in the use of dirty fuels such as coal and wood as in Greece and Turkey.

### ***Addressing the challenges – solutions and recommendations for the region***

#### **Promoting the social function of land and housing**

It should be viable to use homes that do not serve as the primary residence of a family for social ends. To use such homes it is necessary to resort to carrots and sticks. Carrots could come in the form of tax exemptions. Developers should also be encouraged/obliged to build social housing.

#### **Mortgages**

Mortgage relief is a possible option to avoid mass foreclosures, as was implemented during Roosevelt administration but this could again lead to speculation etc. Arguably a better solution would be for local governments to buy foreclosed property and use it for social housing purposes rather than bailing out banks or homeowners. Tax exemptions for home owners (e.g. in the US and Netherlands) who take out mortgages should be abolished so as not to encourage speculation and the development of a real estate bubbles – these measures are regressive as the assistance is greater for those with expensive homes. Financial literacy programmes and legal assistance should also be developed and implemented – this could also help consumers avoid predatory lenders.

#### **Alternatives to Home-ownership**

The model of cooperative housing or communal ownership is a good model (although, evidently, it does not have universal approval) and the opportunity to form such cooperatives should be available and incentives should be offered (though corruption may be an issue in some countries). Land regulation to open up access to land for cooperative housing is also necessary. The example of cities such as Sao Paulo is instructive as they have created special zones designated for cooperative and social housing. Different housing arrangements such as community land trusts and cohousing also provide alternatives to individual ownership.

## **Private rental sector**

The interests of tenants and landlords need to be balanced. One way of doing this is through rent control as in New York City. Taxes on empty properties should be raised but not all owners would be susceptible to such disincentives (unless the taxes were sufficiently high).

It is necessary to adopt a national framework on security of tenure (tenure may be defined as the security of use and the ability to stay/remain in a place).

## **Social housing**

Social housing should be targeted to most vulnerable but it is still necessary to avoid segregation – the example of Vienna is instructive as social housing buildings comprise tenants from all social strata. Quotas for social housing as a percentage of total housing stock in a city/area may also be created. Participation should also be integrated in to the operations of governmental housing agencies, particularly those that function as developers.

## **Informal settlements**

Sometimes settlements should be upgraded to enable inhabitants to stay there but this is not always possible and as a last resort people may have to be relocated. There is a lack of data on security of tenure but every state must have a clear picture of informal settlements and of people living there so as to inform decisions on relocation and upgrading etc.

## **Affordability of Housing: Income and Rent**

There is an idea that only a certain percentage such as 25% or 30% of a family's income should go towards rent. However, minimum wages in many countries do not cover the cost of housing. There is a social movement in Spain that propose a moratorium on rent payment while people are unemployed but then the interests of the landlords must also be taken into account – should the state step in to pay the rent? There have also been proposals to institute a moratorium on evictions when the owner is a financial institution so that the occupant can stay for a certain period of time despite non-payment of rent.

## **Examples of innovative measures already implemented in Europe**

In Paris there is a partnership between local authorities and small landlords. To ensure rent will be paid to these landlords, the municipality of Paris guarantees the rent in case of non-payment by the tenant but the rent is reduced compared to market rents (the municipality then assumes management of the property and the responsibility of finding tenants). However, very few properties are rented out in this way.

ESC Committee – Times of crisis call for the institution of special measures to protect the most vulnerable.

The measures instituted in Andalucía are a good example of such special measures. In Andalucía the regional government has passed a law (3 months ago) enabling it to expropriate the use of unused foreclosed property (property lying empty for more than 18 months) from financial institutions to provide social housing (but European Commission objected to this). Only the use of the property is expropriated, title remains with the owner to sidestep the payment of compensation.