

COORDINATED BY
Guillem Fernández Evangelista

EDITED BY
Samara Jones

MEAN STREETS

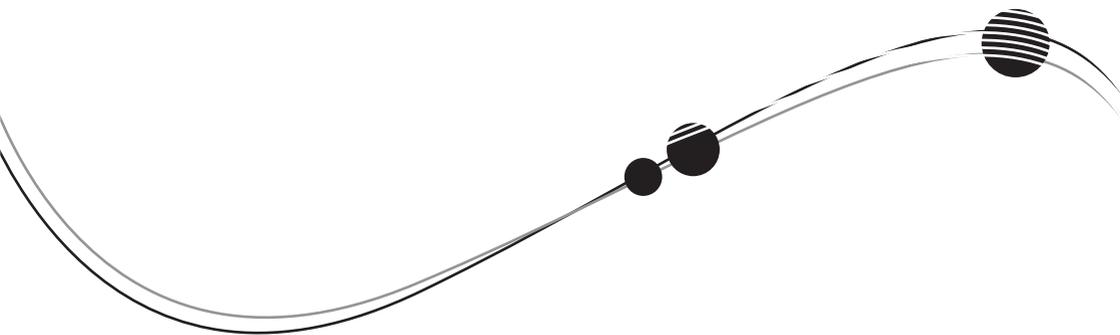
A REPORT ON THE CRIMINALISATION
OF HOMELESSNESS IN EUROPE

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



POLITICAL MEASURES
CHAPTER VIII

Prevention, Homelessness Strategies
and Housing Rights in Europe



Guillem FERNÁNDEZ EVANGELISTA
Associació ProHabitatge
Government and Public Policy Institute (IGOP)
Autonomous University of Barcelona

*"A peaceful beggar poses no threat to society.
The beggar has arguably only committed the offense of being needy.
The message one or one hundred beggars sends society can be disturbing.
If some portion of society is offended, the answer is not in criminalizing these
people ... but addressing the root cause of their existence.
The root cause is not served by removing them from sight, however;
society is then just able to pretend they do not exist a little longer".*

U.S. District Court Judge Robert Sweet (1993)

Homelessness affects all the Member States of the European Union. Different countries have adopted strategies to fight homelessness and housing exclusion at the national (Ireland, Norway, Sweden, Denmark, Finland, The Netherlands, France and Portugal) or regional (England, Scotland, Wales, Northern Ireland, and the North Rhine-Westphalia region in Germany, etc.) level. Homelessness is on the European political agenda, which makes it possible to design policies in a coordinated fashion and implement them at the local level, since the important role of the municipalities is acknowledged in most national strategies (Denmark, Sweden, Finland, The Netherlands, Ireland and Scotland). The different national strategies for the eradication of homelessness also show that there is a growing interest in prevention as the most effective and least costly approach (CEC, 2010). Most strategies make explicit reference to the prevention of homelessness (Norway, Sweden, Finland, Ireland, Scotland, England, Wales, Northern Ireland, The Netherlands, France and Portugal), but national distinctions are evident in policy development.

WHAT PREVENTION OF HOMELESSNESS MEAN?

Prevention can be the set of activities aimed at avoiding the occurrence of something, that is, anticipating in order to minimise risks. The terms primary, secondary and tertiary prevention have been used traditionally in the theoretical-practical field of the science of prevention (Cornes *et al.*, 2004). Gerald Caplan published *Principles of Preventive Psychiatry* in 1964, in which he considers that preventive psychiatry is the set of knowledge and skills to reduce, in a specific community, the frequency of mental disorders, the duration of the disorders and the appearance of sequela or the deterioration that some of them involve. Therefore, “primary prevention” seeks to reduce the incidence by promoting health or health education; “secondary prevention” aims to reduce prevalence by means of early diagnosis, effective treatment and accessibility and speed of services; and finally, “tertiary prevention” seeks to reduce sequela and chronic recurrence through rehabilitation and social reinsertion (Vallejo, 2006).

Many public health professions have accepted this division of prevention into three categories was, but others extend it further to include “quaternary prevention”, which would be the set of healthcare activities attenuating or avoiding the consequences of unnecessary or excessive interventions by the healthcare system (Ortún, 2003), while others criticise it, considering, “tertiary prevention” not as prevention in itself, but rather as rehabilitation (Cornes *et al.*, 2004). One can also talk about “universal prevention”, “selective prevention” and “indicated prevention” (Shinn *et al.*, 2001).

The application of the theoretical framework of public health in the social sciences has not been viewed kindly by different authors (Billis, 1981 and Freeman, 1999) who claim that it is impossible to establish causal relationships in the social sciences like in the natural sciences, and that a problem or phenomenon cannot be prevented unless there is an unequivocal and proven causal link between intervention strategies and the specific problem one is seeking to eradicate (Crane and Brannock, 1996). But the importance of the evidence-based prevention approach is spreading, both in the public health sphere (Cornes *et al.*, 2004) and in social policy (Sutcliffe *et al.*, 2005), and particularly in the study of homelessness (Edgar *et al.*, 2000; Shinn *et al.*, 2001; Pawson *et al.*, 2007; Busch-Geertsema *et al.*, 2008 and Culhane *et al.*, 2011). Thus, if we apply Gerald Caplan's classification of prevention measures to homelessness (Busch-Geertsema *et al.*, 2008) we can see the following:

- **Primary prevention:** These are the activities that reduce the risk of a homelessness process starting among the general population or a large part of the population. It is at this level of prevention that the role of general housing policy (supply, access, and affordability) and other policies linked to housing aid and social protection is pivotal.
- **Secondary prevention:** Interventions that focus on people with a potentially high risk of starting a homelessness process due to their characteristics (e.g. having been under the long-term responsibility of institutions like prisons or hospitals) or because they are in crisis situations that lead to homelessness in the very near future (e.g. evictions).
- **Tertiary prevention:** Measures targeting people who have already lived in a situation of homelessness and therefore require quick relocation or attempts at minimising the chances that they will return to a situation of homelessness.

The application of Caplan's definition of homelessness helps us understand prevention as a *continuum* of situations to be prevented and identifies the risk factors and the most practical points of intervention for prevention initiatives (Culhane *et al.*, 2011). However, it is necessary to bear in mind that secondary and tertiary preventive interventions cannot replace general policy measures (or primary prevention) to ensure a sufficient supply of affordable housing (Shinn *et al.*, 2004).

PREVENTION IN STRATEGIES TO COMBAT HOMELESSNESS

In some strategies, prevention can focus more on secondary prevention and tertiary prevention measures (Denmark, Norway, Finland), while others emphasize primary prevention and focus less on the quantitative goals to be achieved in secondary or tertiary prevention (France, Portugal). The primary prevention measures we can find in homelessness strategies refer to housing plans developed in separate documents, but they acknowledge the need to plan and provide more social housing (Ireland), specifying (or not) the type of social rental housing (England) or facilitating access to social housing for homeless people (Wales). Some strategies contemplate facilitating access to the private market (Sweden, France) and others (Finland) make no explicit mention of general measures, because they assume the existence of

secondary prevention measures does not imply abandoning housing policies that are geared toward increasing the social housing stock in order to ensure the reduction of homelessness (Luomanen, 2010).

Secondary prevention measures tend to be initiatives aimed at preventing and reducing the number of evictions (Norway, Sweden, Finland, Ireland, Scotland, Wales, France) and increasing efforts to help people who are leaving prisons, mental health institutions or hospitals after extended stays (de-institutionalisation), so that they can have access to adequate housing (Norway, Sweden, Denmark, Finland, The Netherlands, France). Thus, some countries specify target percentages in the reduction of evictions (Norway, The Netherlands) and others explain the measures in more general terms (France), whereas others do not include prevention and reduction of evictions in their homelessness strategy (Portugal, Denmark).

With regard to tertiary prevention measures, some countries tend to reduce the number of homeless people in their streets, their recurrence and chronic homelessness using strategies that are explicitly based on the “Housing First” approach or “Housing Led Approaches” (Norway, Sweden, Finland, Denmark), while other countries also consider this approach to be important but, at the same time, wish to improve the quality of the network of shelters and housing support services and the fight against sub-standard housing (The Netherlands, France, Portugal). Still other countries stress access by homeless people to health, training, employment and housing services (Ireland, England, Scotland, Wales).

THE HUMAN RIGHTS BASED APPROACH AND STRATEGIES TO TACKLE HOMELESSNESS

Through case law by the European Court of Human Rights and the Social Rights Committee, the Council of Europe has identified the grounds for building strategies aimed at eradicating homelessness in Europe. As we will see below, the case law stemming from article 31 of the Revised European Social Charter in relation to housing, specifies what it understands by “prevention”, “reduction” and “gradual elimination” of homelessness (art. 31.2 rESC).

The European Social Charter (ESC) of 1961 wanted to guarantee and promote social rights in Europe. Together with the European Convention on Human Rights (ECHR), it constitutes the Council of Europe’s platform for human rights issues. The European Social Charter contains social and economic rights, while the European Convention on Human Rights focuses primarily on civil and political rights. Little by little, the perception that the Council of Europe’s ESC is the “poor relative” of the ECHR, stressing the evolution of the European Social Charter as an emblematic manifestation of the European Social Rights Law or Social Human Rights Law and as a bastion of European social democracy, has dissipated (Jimena, 2006). A contributing factor in overcoming this initial perception was the progressive strength gained by the principle of indivisibility of human rights. The European Social Charter was successively updated in different protocols (1988, 1995) and

definitively adapted its contents in the Revised European Social Charter (rESC) of 1996, with the aim of reflecting the social changes that had taken place since the ESC was adopted. The Council of Europe's goal was also to strengthen the role of the Charter as the safeguard of social rights and social security in Europe. As a result, the revision introduced a number of new articles that recognized rights like the right to protection against poverty and social exclusion (art. 30 rESC) and the right to housing (art. 31 rESC), making explicit reference to the problem of homelessness:

“With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

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

In this regard, the countries that signed and ratified the ESC and the rESC have undertaken to ensure a series of human rights connected with the right to housing, and in the rESC, explicitly so. The Committee of Social Rights (CSR) was created to oversee its application, determining if the countries have abided by the undertakings set out in the ESC and the rESC. As Padraic Kenna explains, the oversight process includes a detailed questionnaire that sets out to clarify the obligations undertaken by the Party States (Kenna, 2006). The 2003 conclusions relative to article 31.2 of the CSR clarify that a “homeless person” is any individual who is not the legal occupant of a dwelling or other type of adequate shelter or accommodation (CDS, 2003). Considering that provisional accommodations, though adequate, cannot be considered to be sufficient, and considering those people living in such conditions who do not wish to do so, they should be provided with adequate housing within a reasonable period of time (Mikkola, 2010).

The fight against homelessness has serious implications for the obligations of the public powers in terms of resources and results. The goals stemming from article 31.2 of the rESC are the “prevention” and the “reduction” of homelessness, with the special requirement of adopting measures toward its “gradual elimination” (Mikkola, 2010). The CSR considers that article 31.2 of the rESC obliges countries to take measures in response to homelessness, which involves the immediate provision of housing and support for homeless people, as well as measures to help these people overcome their difficulties and prevent them from finding themselves once again in a situation of homelessness (Kenna, 2006). In its turn, the Committee considers that the States who have signed the Charter should take measures aimed at providing housing and preventing the loss of such housing, which involves actions preventing certain vulnerable groups from becoming homeless. On the ground, this means that the States should apply a housing policy targeting underprivileged groups of people in order to guarantee access to (social) housing.

As reflected by the Recommendation by the Commissioner for Human Rights of the Council of Europe, the “prevention of homelessness” can include legal protection of tenants against unfair and disproportionate contractual conditions, the indiscriminate

termination of contracts and evictions, as well as having a sufficient rental housing stock to provide housing to vulnerable groups.¹ Moreover, requirements regarding the availability of social housing for rent, selection criteria and waiting periods and lists are also applicable. One should also bear in mind the legal protection of people threatened by eviction, in particular the obligation to consult with the affected parties in order to find alternative solutions to eviction, and the obligation of setting a reasonable advance notice of eviction, and forbidding evictions at night or in the winter period (Mikkola, 2010). In its 2005 Conclusions for Lithuania, Norway, Slovenia and Sweden, the Committee on Social Rights considered that, for the protection against unlawful eviction, States must set up procedures to limit the risk of eviction. The Committee recalls in Conclusions 2011 for Ireland that, in order to comply with the Charter, legal protection for persons threatened by eviction must include the following:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction.

Obviously, these conclusions are based on the Human Rights Based Approach and are in perfect alignment with General Comment n° 7 of the UN Committee on Economic, Social and Cultural Rights, where it considers that the procedural protections which should be applied in relation to forced evictions should include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts. Moreover, evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to provide adequate alternative housing.

The target of “reducing homelessness” implies the introduction of emergency measures and long-term measures, such as supplying housing and providing immediate attention to homeless people, as well as measures to help them overcome

1. Recommendation of the Commissioner for Human Rights on the implementation of the right to housing Strasbourg, 30 June 2009. CommDH(2009)5

their difficulties and avoid being rendered homeless. In this regard it is important to take into account the impact this recommendation can have on public policies to eradicate homelessness based on indiscriminately creating bunk space in traditional shelters in a single space or in large pavilions, as they may conflict with the standards of dignity in articles 2 and 3 of the ECHR relative to the right to life and prohibition of torture and degrading treatment (Mikkola, 2010). As specified by the Recommendation of the Commissioner for Human Rights regarding the right to housing, an individual's dignity must be respected, which means that the dwelling, even temporary shelters, must meet standards of safety, health and hygiene, including basic utilities, drinking water, lighting and heating. The CSR has also pointed out the importance of respecting human dignity and "the greatest possible degree of independence". Thus, "gradually eliminating homelessness" can be understood as a sum of "prevention" and "reduction" measures as people and families with multiple problems should also be able to receive multiple support services to improve their capabilities, and therefore different positive measures should be implemented in risk groups (Mikkola, 2010). In conclusion, in the framework of the EU Social Inclusion Strategy, States should be developing strategies to prevent homelessness, tackle the causes of homelessness, reduce the level of homelessness, reduce the negative effects on homeless people and their families and ensure that formerly homeless people can sustain permanent independent housing (Edgar, 2009).

This argument led to the adoption in Europe of the Housing First approach, which comes from the United States. As noted by Nicholas Pleace (2011), this approach is based on the principle that housing is a basic human right and is characterized by the following:

- Respect, warmth and compassion for service users.
- A commitment to working with service users for as long as they need.
- Scattered site housing using independent apartments (i.e. homeless people should not be housed within dedicated buildings but within ordinary housing).
- Separation of housing from mental health, drug and alcohol services (i.e. housing provision is not conditional on compliance with psychiatric treatment or sobriety).
- Consumer choice and self-determination.
- Recovery orientation (i.e. delivering mental health services with an emphasis on service user choice and control; basing treatment plans around service users' own goals).
- A harm reduction approach (i.e. supporting the minimization of problematic drug/alcohol use but not insisting on total abstinence).

In January of 2012, the European Committee of Social Rights (ECSR) of the Council of Europe, through its monitoring mechanism based on the "Human Rights Based Approach", published its annual conclusions on the compliance of countries with their responsibilities in terms of guaranteeing the right to housing. Six of the eight EU Member States that are obliged to comply with this fundamental right by reason of having ratified article 31 of the Revised European Social Charter failed to fulfil their obligations (France, Italy, Lithuania, The Netherlands, Portugal and Slovenia). The jurisprudence from both collective complaints and the European Court of Human Rights can be brought to bear in these conclusions, and in 2012, the ECSR cited

the Collective Complaint *Autisme Europe v. France* (CC No. 13/2002) in which the Committee established that the measures taken to implement the Charter Articles must meet three criteria:

- A reasonable timeframe.
- A measurable progress.
- A financing consistent with the maximum use of available resources.

In the Collective Complaint *FEANTSA v France* (CC No. 39/2006) added to the jurisprudence, the Committee, following the Human Rights Based Approach, pointed out that the obligation of States in realizing the rights in the Revised European Social Charter must be practical and effective. This means that, for the situation to be compatible with the treaty, States Party must:

- Adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter.
- Maintain meaningful statistics on needs, resources and results.
- Undertake regular reviews of the impact of the strategies adopted.
- Establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage.
- Pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.

Only Finland and Sweden met the requirements of the 2012 (ECSR) conclusions. Both countries have national strategies for eradicating homelessness based on housing as the focal point and the “evidence-based approach” as the mechanism for overseeing clear and measurable objectives. The example of Finland and Sweden shows that it is possible to respect the right to housing. On the other hand, France, in spite of having approved the enforceable right to housing (DALO) in 2007 -- motivated, in part, by FEANTSA’s successful collective complaint against them -- still fails to provide access to housing at an adequate level (article 31.1 rESC), has failed to reduce significantly the number of homeless people (article 31.2 rESC) and does not guarantee that housing prices are affordable for people with limited resources (article 31.3 rESC). Moreover, the ECSR condemned France for its eviction policy and found it unacceptable that 91,000 families were threatened with eviction between 2007 and 2009 with no prospects of relocation and no right to housing benefits. This leads one to conclude that the fight for the right to housing and its implementation still has a long way to go in Europe.

CONCLUSION

Policies against homelessness are undergoing a paradigm shift from a model based on alleviation, rehabilitation and stabilization of homelessness to a housing-based model centred on preventing and reducing homelessness. The human rights approach plays an important role in the development of these policies, as it is not limited only to recognizing the right to housing in the constitutions or legislations

of the States, but rather the monitoring of public policy in relation to the principles of human rights is essential for ensuring their proper evolution. In this regard, the evidence-based approach plays an essential role that is complementary to the human rights-based approach, and vice versa. Both approaches are the two sides of a the same coin in the fight against homelessness. Both can be used to hamper the development of human dignity through restrictive policies that penalise poverty and the access to public services and benefits, or by not recognizing, not respecting, not protecting or actually violating human rights.

The different national strategies identify points that can prevent and reduce homelessness (and therefore approach this problem not from the management and penalisation of poverty, but from the perspective of its gradual elimination through the prevention of homelessness) either by offering measures oriented toward people who are leaving institutions (like prisons) or by preventing evictions, putting an end to the more explicit forms of homelessness, reducing the duration of homelessness on the street, reducing the wait time for provision of emergency and temporary shelter and improving the quality of services for homeless people and the supply and suitability of affordable housing.

REFERENCES

- Billis, D. (1981): 'At risk of prevention', Journal of Policy Studies, Vol. 10, No. 3, pp. 367-379
- Busch-Geertsema, V. and Fitzpatrick, S. (2008): Effective homelessness prevention? Explaining reductions in homelessness in Germany and England. *European Journal of Homelessness* 2: 69–95.
- Caplan, G (1964): Principles of preventive psychiatry. New York: Basic Books.
- CSR (Committee on Social Rights) (2003): 2003 Conclusions. Council of Europe Volume I – Italy p. 345
- Cornes, JM.; Fernández,L.; Arauxo,A. & Pedrejón, C. (2004): Ciencia de la prevención: fundamentos y perspectivas. Implicaciones en psicología. *Psychiatry magazine of the Faculty of Medicine, University of Barcelona*; 31 (2):86-95
- Commission of the European Communities (2010): Proposal for the Joint Report on Social Protection and Social Inclusion 2010. Supporting document Brussels, 5.2.2010 SEC (2010) 98 final.
- Crane, P. and J. Brannock (1996) Homelessness among young people in Australia: Early Intervention and Prevention. A Report to the National Youth Affairs Research Scheme, Hobart: National Clearing Housing for Youth Studies
- Culhane, D.; Metraux, S. & Byrnea, T. (2011): A Prevention-Centered Approach to Homelessness Assistance: A Paradigm Shift? *Housing Policy Debate*, 21: 2, 295 — 315
- Edgar, W.; Doherty, J. and Mina-Coull, A. (2000): *Support and Housing in Europe*. Policy Press, Bristol
- Edgar, B. (2009): European Review of Statistics on Homelessness. December 2009. European Observatory on Homelessness. FEANTSA
- Freeman, R. (1999) 'Recursive Politics: Prevention, Modernity and Social Systems', *Children and Society*, 13: 232-241.
- Jimena, L. (2006): Retos pendientes del Estado Social Español: En especial, la ratificación de la Carta Social Europea Revisada de 1996. *Nuevas políticas públicas. Multidisciplinary yearbook for modernization of the Public Administrations*, p. 40-71
- Kenna, P (2006): *Housing Rights and Human Rights*. ProHabitatge Edicions
- Kenna, P (2011): *Housing Law, Rights and Policy*. Clarius Press
- Luomanen, R. (2010): Long-term homelessness reduction programme 2008 – 2011. Host Country Report in the Peer Review The Finnish National Programme to reduce long-term homelessness, Finland
- Mikkola, M. (2010): Social Human Rights of Europe. *Legisactio*
- Ortún, V. (2003): Gestión clínica y sanitaria. De la práctica diaria a la academia, ida y vuelta. Barcelona: Elsevier/Masson; p.245
- Pawson, H., Davidson, E. & Netto, G. (2007) Evaluation of Homelessness Prevention Activities in Scotland (Edinburgh : Scottish Executive).
- Pleace, N. (2011): "The Ambiguities, Limits and Risks of Housing First from a European Perspective". *European Journal of Homelessness* _ Volume 5, No. 2, December 2011



Shinn M., Baumohl J., Hopper K. (2001). The prevention of homelessness revisited. *Analyses of Social Issues and Public Policy*, 1:95-127.

Shinn, M. (2004) Prevention, in: D. Levinson (Ed.) *Encyclopaedia of Homelessness, Analyses of Social Issues and Public Policy Vol.2* (Thousand Oaks/London: Sage).

Sutcliffe, S. and Court, J. (2005): *Evidence-Based Policymaking: What is it? How does it work? What relevance for developing countries?* Overseas Development Institute

Vallejo, J. (2006): *Introducción a la psicopatología y la psiquiatría*. Masson. 6th edition. p. 814

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.

Cover design : Genaro Studio [Lyon - France]

European Federation of National Associations Working with the Homeless AISBL
Fédération Européenne d'Associations Nationales Travaillant avec les Sans-Abris AISBL
194 Chaussée de Louvain - 1210 Brussels - Belgium
Tél. +32 2 538 66 69 - Fax +32 2 539 41 79 - office@feantsa.org - www.feantsa.org



FEANTSA is supported financially by the European Commission.
The views expressed herein are those of the authors and the Commission
is not responsible for any use that may be made of the information contained herein.

ISBN: 978-2-8052-0218-6



9782805202186