

Housing Rights Seminar

4 December 2015

11:00 to 4:00

Doughty Street Chambers
53-54 Doughty St, London WC1N 2LS

3 ideas from the “Calais jungle” perspective

[Marc Uhry](#), Fondation Abbé Pierre Europe (France)

The obscenity of the freedom to cross borders for a French guy, who can go to London when he wants, while people, who dream to come in UK once in their life, are stuck in Calais. It describes well the inequality of ability to freely cross borders.

In “Calais jungle”, there are 5000 to 7000 people, undocumented migrants/asylum seekers/European migrants (Roma people for instance) who do not want to stay in France.

The situation is absurd: migrants protection/legal situation is decreasing, French lawyers made mistakes last 15 years, focused on technicalities while accepting philosophical defeat. We lost the capacity to say “this situation is absurd and no bearable”.

The rights to an emergency provision for these people:

- DALO right to housing at national level (French justiciable right to housing): it's imperfect, and you're not allowed to go in social housing if you don't have papers. You're just allowed to go in emergency shelter.
- Right to shelter is a fundamental freedom (for everybody), it let a choice: send people away or house them. But nobody left in the scope of this freedom: it highlights the paradox of a fundamental right that lead to a categorization of people to restrict the access to the right. Why fundamental rights should lead to categories? International law have to scrap down categories, everybody have to be under the scope of fundamental rights.

The Dano case: the European Court of Justice's finding of an unreasonable burden is an over interpretation: migrants are not entitled to ask for any type of public support. ECJ made distinction between discretionary and non-discretionary benefits. But other cases of the European Court of Justice take the opposite view: emergency shelter provision is not under the scope of unreasonable burden.

FEANTSA v. The Netherlands Collective Complaint: migration strategies can't be a pretext for not fulfilling fundamental rights. Everyone has access to emergency shelter.

There are enough standards and justiciable rights in existing international law to say “everybody is entitled to shelter”. But we need to use them and to ensure that they do not get reduced to categories.

Discussion

Equal Rights Trust: project with migrants in UK > framing in terms of discrimination: how much work has been done from an Equality Act perspective, how to use the right to non-discrimination in the UK?

- Inputs from the audience:
 - _ Courts recognize discrimination based on nationality / but not on migration status.
 - _ Supreme Court judgement: 3 cases on homelessness, 1 on discrimination. What are duties under Equality Act on non-discrimination? New area to think a lot.
 - _ Many cases in international institutions include discrimination: from the European perspective, e.g. European Roma Centre jurisprudence/or FEANTSA v. France, systemic discrimination can be recognized without actual proof.

Mark Jordan, University of Southampton: local connections?

- Inputs from the audience:
 - _ Local connection is embedded in England, not in Wales. Government might get behind the idea to remove right to local authorities to set own criteria.
 - _ Crisis is campaigning to get prevention and to remove local connections.
 - _ FEANTSA v. The Netherlands: local connections are unlawful (in the context of shelter). Local connexion test doesn't exist anymore in the Netherlands thanks to FEANTSA's Collective Complaint. In the methodology, NGO's and local authorities were together to charge the State for the costs of right to housing. Find alliances between NGO's and cities to put pressure on national level.
 - _ Perversity of local connection: you can be sent thousands of miles away in name of local connection.
 - _ Debate: Does it be realistic to have an absolute positive obligation to respect a right to shelter to all > dominant narrative in England: English housing, English resources for English people, you're not entitled to stay in England if you are not “solvent”.
 - _ In Spain: Spanish or not Spanish homeless have the same right to shelter.