FEANTSA

HOUSING RIGHTS WATCH

On 24th May, FEANTSA and Caritas Espanola organized a working seminar within the framework of the Housing Rights Watch Project.

We managed to gather in one room some of the most motivated and passionate lawyers specialising in litigation surrounding the right to housing together to work on advocacy of social rights.

We had the chance to have Javier Rubio, barrister at CAES, to explain the process they had followed to achieve the decision of MBD v. Spain before the ECSR Committee. He used the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) that allows victims of violation of economic, social, and cultural rights to present a complaint for violation of the right to housing.

Javier Rubio explained how they turned to the international committee only after exhausting all domestic remedies including "*Recurso de Amparo*", an appeal before the Constitutional Court for Violation of Constitutional Rights which was rejected.

They then submitted the communication and the procedure started: admissibility, the parties allegations, and the third parties' contribution. ESCR-Net and the Special Rapporteur on adequate housing intervened in the case, providing material to support the case and showing the relevance of third party interventions for the drafting of general recommendations.

The friendly settlement was rejected by the Spanish state and the resolution was made public two years later in June 2017. The ESCR Committee ruled that Spain had violated the right to housing and issued individual recommendations, urging the repair of the damage and the granting of compensation to the family. The decision also included general recommendations to avoid new violations:

- To promote legislative and / or administrative measures where the judge can evaluate the consequences of an eviction in the procedures of eviction of tenants.
- To improve the coordination between the judiciary and the social services in order to prevent an evicted person from leaving his/her home without alternative housing.
- That the evictions of vulnerable people only take place after having consulted in a genuine and effective manner these people and to ensure that the state has made every possible step using the maximum available resources to obtain an adequate alternative housing.
- To formulate and then implement, in coordination with the regions, a plan to guarantee the right to housing for vulnerable people with the provision of resources, deadlines and an evaluation system.

These recommendations reveal structural failures within the Spanish system and judicial practice and the Spanish Government is given a 6-month deadline to respond.

Javier Rubio reminded us that, in the 90s, it was the doctrine of the constitutional court that, before allowing entry into the home for an eviction, a "proportionality assessment" should take place, but this doctrine had become inoperative by the courts and tribunals in Spain. This was happening in parallel to decisions by the Strasbourg court. There is no real tradition in the Spanish courts.

A positive unexpected outcome of the decision was that the city of Madrid decided a moratorium on evictions from the rented housing of the Municipal Housing and Land Company (EMVS) in August 2017.

A number of civil society organizations active in the field of the right to housing came together in November 2017 and created a monitoring group. Their main goal has been to disseminate the information about the decision and do advocacy work so that Spain responds adequately to the ESCR Committee. FEANTSA was asked to participate in the monitoring group and Sonia Olea from Caritas Española has participated so far on behalf of FEANTSA. The OP-ICESCR is a powerful tool for advocacy and the group has been very active since November 2017.

In relation to follow up, the Committee issued the Working methods concerning the Committee's follow-up to Views under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights at its 61° session (29 May – 23 June 2017).

The response from the Spanish State after six months was insufficient, just one and a half pages focusing mainly on the measures addressed to mortgage lenders and how the monitoring group reacted accordingly in the following two months. Apart from the follow up with the Committee the group is doing advocacy at a national level, there was an informative breakfast, they have written illuminating notes for the press to understand the process and, as a result of this, some progress has been made during the last months:

- A Commission in Parliament was created to follow up on the UN decisions.
    - Different than the Intergroup that is dedicated to the implementation of the recommendations from the UN Committee on Economic, Social and Cultural Rights. The concluding observations of the Committee about Spain were published in March 2018 and included a request for an effective implementation of the MBD v Spain decision.
- The Ombudsman of Spain has opened an investigation into the violation of the right to housing
- A Motion was passed in the Spanish parliament declaring that they should use all means to implement the Decision of July 2017.
- At regional level Aragon and the Basque Country have supported the implementation of the decision.

The decision has also been used to request the suspension of the evictions in a number of cases and the Committee on Economic, Social and Cultural Rights consistently, in accordance with the opinion issued last summer, has provisionally suspended the eviction of a family and their two underage daughters in Madrid.

There have been at least three suspensions and although they do not always mention the international treaties and the interim measures decided by the Committee, it is in line with the General Comment number 7 on the right to adequate housing (art. 11.1 of the Covenant) on forced evictions about the obligation to "*ensure that alternative suitable solutions are provided*" when evictions cannot be avoided.

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A discussion on how to understand the alternative suitable solution followed: it could be fulfilled by offering them a shelter, social housing, or other options. There is potentially room for a new General Comment from the Committee that could define the minimum content of the right as well as establish the temporality of the stay.

The lawyers and judges are not using the international human rights in the implementation of the law. More capacity building needs to be done in this respect. The lawyers who do mention and use international human rights are members of activist's groups or NGOs. At the same time, there is no proper legal (procedural) channel to make the UN committees' decisions effective before the court.

The Optional Protocol is being used extensively and there is a fear that maybe in the coming months the demands for interim measures will increase. They are worried about what the reaction of the Committee will be. Communications with the Committee are done via email, fax, ordinary mail, and they believe there is a possibility at some point the committee will not be able to process these demands, due to lack of resources. Meanwhile, at national level there will continue to be court decisions with different and possibly contradictory content.

Spain is signatory of some other Optional protocols of the UN System like the Committee on the Elimination of Discrimination against Women (CEDAW), but also the Committee on the Rights of Persons with Disabilities (CRPD), which gives the Committees competence to examine individual complaints against the state party.

One of the main challenges is certainly the domestic acceptance/ enforceability of these views in Spain and we heard Gema Fernández, Managing Attorney from Women's link, on how they are litigating at national level to fight for the implementation of the Ángela González Carreño vs. Spain (2014), view of the Committee on the Elimination of Discrimination against Women (CEDAW).

At this stage, they are trying to get an answer from the Spanish Supreme Court on what would be the "appropriate legal channel" to implement the views of the CEDAW Committee. This court decision will be published at the end of June 2018. A victory on this case will be a victory for the rest of the human rights defenders as it will be highly useful in relation to the domestic acceptance of the UN Committee's views. There are many other actors that have a role to play in establishing an internal procedure which include: Foundation of the Lawyer, Ombudsperson, State Lawyers.

Women's Link is already thinking an alternative way to ask the ECHR for this appropriate legal channel using Article 13 – Right to an Effective Remedy- of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The recent Concluding Observations of ESCR Committee-2018 ask Spain to "*Establish an effective national mechanism for the implementation and monitoring of the recommendations and opinions of the Committee*". It also urges Spain to adopt a legislative framework that establishes adequate procedures to carry out evictions, incorporating the principles of reasonableness and proportionality, as well as the due procedural guarantees for the persons concerned.

The “Platforma DESC” (ESCR platform) have managed to contact political parties in parliament in order to push for the implementation of these UN recommendations in Spain.

Paloma García, advocacy officer for Red Acoge explained to us how they established the platform more than two years ago. It was created firstly to write an alternative report to the committee (shadow report), but at some point, all the participants agreed that the platform should permanently work and fight for the effective implementation of the recommendations of the Committee. Paloma insists on some of the Committee recommendations to the State party:

> (a) Take appropriate legislative measures to ensure that economic, social and cultural rights enjoy a level of protection similar to that accorded to civil and political rights and to promote the applicability of all Covenant rights at all levels of the justice system, including the use of “amparo”;
>
> (b) Organize training courses for judges, lawyers, law enforcement officers, members of the Legislative Assembly and other persons responsible for the implementation of the Covenant, not only about the rights and general observations of the Committee and the possibility of invoking them before the courts;
>
> (c) Raising awareness among rights holders of the justiciability of economic, social and cultural rights;
>
> (d) Establish an effective national mechanism for the implementation and follow-up of the Committee's conclusions and decisions.

The platform realized that most of the recommendations were connected to the Parliamentary action as there was a need to adopt laws to make sure that the Covenant was respected.

They saw the need for some kind of Monitoring Mechanism in Parliament to implement the recommendations. They started contacting all political parties. They held a meeting that explained the UN mechanisms, however the Parliament ignored the existence of the UN covenants or procedures, so it was clear some training was necessary.

Then the creation of an intergroup was decided with the agreement of all parties. Even the conservative party and Ciudadanos agreed on this. When the recommendations (Concluding Observations) were published in March 2018 a meeting was called.

They started to look at what actions were needed in Parliament and, on seeing that the UN was not present, one of the priorities was to invite them to Parliament. Monitoring bodies, rapporteurs, etc. The idea was to bring the international human rights instruments and mechanisms to Parliament.

The different participants debated on the importance of working in partnership with organisations in different areas. In the room there are organizations working on women’s rights, immigrants’ rights, and lawyers specialised on the right to housing. They all agree on the importance of exchange of working methods, to see what has worked, what was not useful, and how to obtain better results both in terms of litigation and advocacy.

In the final part of our meeting, the “mainstreaming” concept came up, mainstreaming of international human rights. The idea is that we need to integrate them in the institutional framework, into the legislation, into political parties. When political parties are on board, the institutions will say yes.

In Ireland, some political parties agree whilst in opposition but recant their commitment on entering government.

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In Spain, some political parties have started mentioning some international treaties and the obligations they contain but the commitment of the different parties is relative, it depends on how useful they are for them politically.

When Spain was elected Vice-President of the Human Rights Council the rhetoric of human rights was consistently used, but if you address them as a government they do not assume any concrete commitment. It is only because the NGO force them to work on this. There is no appropriation of the international human rights law.

In relation to the efforts in Spain for the full ratification of the Revised Social Charter, the impression is similar, they do not even know that the Revised Charter has not been ratified. Even high officials are not aware what the contents are.

In Ireland, they see the European elections as an opportunity. In Brussels, political parties and MEPs are traditionally more open. They know and use the international human rights treaties.

How do you mainstream UN Human Rights into European Law? This is an area of work that Padraic Kenna is interested in. He believes that the answer is the European Charter of Fundamental Rights, enforced since 2009. The UN treaties and the Revised Social Charter can all be made binding using the EUCFR.

The EUCFR is accompanied by explanations showing the link between the relevant articles of the UN treaties and the Revised Social Charter and those of the EUCFR, anywhere the charter comes under consideration, the court must look at the origins of the article. For example, Art. 7 is the same as article 8 of European Convention of Human Rights.

The only problem is that the ECFR only becomes applicable when it is a question of EU law. An EU law issue can be: migration, single market, taxes, public procurement around housing, discrimination, etc. We would need to make the case that within the scope of EU law the Charter of Fundamental Rights is applicable. It's the case of the Aziz case, about the mortgage law and unfair terms in Spain which was brought to the consideration of the ECJ. Unfair contract terms have created other cases: Sanchez Morcillo, where the EUCFR is mentioned: art 47, we must have fair procedures of remedies. And also, the Monika Kušionová vSMART Capital a.s., case insist that the right to a home must be respected. The Court of Justice is deliberately bringing the charter into the interpretation of these harmonising measures.

In terms of mortgages and repossessions around the Mortgage Credit Directive 2016. Proceeding have been brought against Spain and Portugal for not implementing the Directive. Forbearance measures, actions taken before legal action - the ECB and European Banking Authority are focusing now single supervisory mechanism. They supervise financial institutions in the EU.

Institutions must be in line with the EUCFR in all their actions. How do you take the charter into account when you are telling the banks to clean up their assets, mortgage books, and eventually evicting thousands of homeowners? The project will try to make the ECB compliant with the EUCFR. A couple of meetings will take place in the autumn 2018 in September (Galway) and October (Brussels).