

Housing rights and evictions in several member states during the Covid19 pandemic

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Ireland

Padraic Kenna, Professor at the University of Galway

Evictions:

In Ireland there has been a ban on evictions and a rent freeze in terms of rent increases but not in terms of charging rents, so rents were still payable throughout the process. The people most at risk were the ones who were not registered as employed and lost their job and hence had no right to unemployment benefits. Rent arrears have accumulated. When the ban on evictions will be lifted, there will be a lot of people being at risk for evictions as they have accumulated rent arrears. Young people in low paid and precarious jobs are the ones most at risk for being in the prescribed situation.

An extension of the emergency measures for as long as the economic effects of the pandemic last is therefore needed. The government makes plans to support businesses for up to two years, including tax releases. Also, emergency housing protection should also be continued for 2 years.

Unfit housing:

When it comes to unfit housing, in Ireland no inspections have been carried out because of the containment measures of the Coronavirus. This leads to a lack of information on what has been happening in the poorer sectors.

In Ireland there are no cases that need to be mentioned when it comes to litigation and eviction.

The Netherlands,

Joris Sprakel, Lawyer and Professor at Fischer Advocaten

Michel Volts, Professor at the Faculty of Law, University of Groningen

In the Netherlands homeless people are being evicted from shelters, even if the government has given money to the municipalities to provide shelter for everyone.

Current there is a curfew for everyone at night apart from homeless people. Consequently, homeless people cannot be fined, but on the hindsight, there is no claim for them to be sheltered. In the Netherlands there is now a situation where, according to legislation everyone should get access to shelter, but in reality, many people are left outside of the target group.

The Courts in the Netherlands are not referring to the decision in FEANTSA vs The Netherlands as they consider it a non-binding decision. Dutch Courts interpret it considering Art. 3 ECHR (prohibition of inhuman and degrading treatment), instead of using the findings of the European Committee of Social Rights. The Court carries out an assessment to see if Art. 3 applies in the situation and then concludes that there is not a sufficient level of severity to amount to a breach of Art. 3.

Evictions:

There is no official moratorium in the Netherlands, but there are only agreements between the government, local governments, landlords, banks etc. Dutch Courts have been more flexible on that, but if tenants do not want to cooperate or there is a case of nuisance there is still the possibility of eviction. All in all, the number of evictions decreased a lot in the Netherlands.

The question on what counts as an eviction arises. If a temporary contract is cancelled and the tenants must leave their home because of that, according to Dutch law that does not count as an eviction. Earlier on in the pandemic, the Parliament acted on this issue and allowed landlords to extend the temporary contracts during the pandemic. This option had not been extended, because of the current political crisis.

Extending temporary contracts has also negative effects as usually according to Dutch law a temporary contract that has been extended after expiration automatically becomes a permanent contract one. The current measure protects more the landlord, who would struggle to find a new tenant during the pandemic. As soon as the pandemic ends, the tenants can be evicted again.

Unfit housing:

A lot of local authorities try to tackle the problem. Substandard housing and slum landlords: a lot of attention on this topic.

Spain

Sonia Olea, Lawyer and Advocate, Caritas España

In Spain, the Government is working on different measures that are relevant for housing rights:

- a new Spanish housing law
- 4 decisions from the ESCREC
- Adopting the Revised European Social Charter and the Protocol

Evictions:

In Spain at the beginning of the pandemic, an eviction can only be prevented if the tenants can prove that their economic problems rose from the COVID-19 crisis. Only later it had been extended to all people in need.

To prevent an eviction the proof of the tenant's social report is needed. The condition for getting this document is the registration at the municipality. According to the Spanish law, everyone can be registered, but currently, for an undocumented migrant, it is impossible to get the registration in many cities. Without the social report and hence the registration, an eviction cannot be prevented. The reality on the ground is different from what was promised from the government and the access to the protective measures is very difficult.

Another example is the new Spanish legislation on minimum income, for which also the social report is needed.

New Housing Law

The decision of the United Nations should all be in the new law. In Sonia's opinion the current COVID-19 measures should be added to the law and become long-term solutions: a tenant should not be evicted for 1 or 3 months if the owner is a company and if the tenants are vulnerable or socially excluded.

UN ESCRC decisions:

According to an internal report of the state attorneys the decision for the UN ESCRC are not binding for Spain. There is a monitoring group that is following up the decisions of the ESCRC. Some of the recommendations that were made by the committee may be introduced in the housing law and some others not.

The fact that the Spanish administration does not consider the recommendations binding has serious consequences especially regarding the suspension of the eviction when there is a vulnerable person. The suspension is already foreseen in the law, but only for one month, which is an insufficient time frame to find an alternative accommodation in Spain.

Belgium/ Flanders:

Geert Inslegers, Lawyer Vlaams Huurdersplatform vzw

In Belgium, the competence for housing lies with the regions. Consequently, there are different measures that are taken in the different regions. In Flanders there was a stop on evictions between the 27th of March and 17th of July. In this period, Courts could still issue eviction judgements, but these judgements could not be executed for public health reasons.

At the end of this period, this measure has not been extended in Flanders and since July it is possible to execute the judgements of evictions. Nevertheless, most judges were very reluctant to issue eviction decisions. The legal debt collectors that should execute the debts declared that they would not put out the tenants except for special cases when they were a threat for the environment or there was a violent conflict. So even if the legislative measures now allow evictions, most tenants do not move currently.

There is a decision of the federal minister of internal affairs saying that if a house is for rent or on sale, then the current tenants should leave when the house is being visited. Nevertheless, the tenants can refuse. Currently in Flanders there is much less movement of people who rent and there are more houses for sale, but not for rent.

Public fund for private evictions:

From the first of July the Flemish government has worked out a public fund for evictions. When private renters have rent arrears of two months or more, they can go to the social welfare service who will take contact with the landlord and will pay 30% of the rent arrears under the condition that the landlord does agree to not evict the renter. At least 2 months, but there is also a maximum level.

The measure is not very well known by the tenants and hence not many of them make use of it. There is a big difference between the social welfare services in the different cities. Some are very active; others are very reluctant.

Hence, the tenants should be informed and public information on this measure should be made available. Furthermore, this should be a right of the tenants and social services should be obliged to applicate this measure if asked so by the tenant.

At the moment the government are reluctant for collective shelters for homeless, because of the health risks for the population. Some homeless people were staying in hotels, which allowed them to search for a house.

United Kingdom:

Mark Jordan, University Professor, University of Southampton

Mischa Nayak-Oliver, Campaigns and Advocacy Lead Just Fair

Renting sector in the UK

Tenants in the UK already before the pandemic had some of the weakest protections against evictions in Europe. This goes back to the 1980s when the private renting sector was deregulated. Since then, the private renting sector has more than doubled in size: now one in 5 households live in private rent. Inflation in house prices has made ownership unaffordable.

A lot of young people live in rent, but also families and people with lower incomes that are not eligible for social housing. Private households spend around 40% of their budget on private renting. 40% of private households struggle to pay their rent. Around 300.000 tenants are struggling to pay their rent since the beginning of the pandemic.

Evictions:

There has been a lot more evictions in the UK in the last few years. Evictions often lead to homelessness.

The measures differed between the four nations of the UK. The competence on housing rights lies with each of the governments. Also the responses to COVID-19 have been different. All the governments have implemented some forms of moratoria of evictions, but the forms differ.

In **Scotland**, the Living Rent Campaign have organised tenants to pressure policy makers into extending protections for tenants. The legislation has effectively stopped all evictions during the moratorium period.

In **England** and **Wales** no evictions will be enforced during this period of moratorium. The Courts have not stopped cases, but they won't be enforced.

In all 4 nations the notice periods that landlords need to serve to end the tenancy have been extended, so they now go from 3 to 6 months.

Courts:

In **England** rent arrears are a mandatory ground for possession. Where the landlord can show that the tenant has serious rent arrears the court must order the eviction. The Court has no discretion in considering the reasons that led to the arrears as the impact of COVID-19 etc.

In England there is an exception on the moratorium on evictions as evictions can continue and be enforced by the bailiff if the tenant has serious rent arrears. If the landlord can show that

there are serious rent arrears, the Court can evict the tenant. Six months of arrears are considered serious rent arrears. There are only four months of notice for the eviction.

In **Scotland**, every time a landlord wants to evict a tenant, the landlord must establish to the court the grounds for evicting the tenant. It gives the court a flexibility to take the public health impact into account. In this way, it has become mandatory for landlords to engage with their tenants if there is rent arrears. The landlord has to show reasonable efforts when trying to work out a repayment plan, otherwise they won't be able to evict the tenant.

In **Northern Ireland**, a similar protection has been given to tenants, but not based on legislation. The Head of the Court, Chief justice, has given an instruction to the judges, saying they must consider all the circumstances when judging over evictions.

Tenant hardship loans:

In **Wales** and **Scotland** loan facilities have been set up by the government. Tenants can apply if they are in arrear to repay the rent arrear. The amount is limited to 9 months of rent and the term of the loan is of 5 years. Problems arise when a tenant has already in substantial arrears, because if they take up this loan, they just accumulate additional debt.

Brexit:

Was does Brexit mean for economic and social rights and especially housing?

The UK is still member of the CoE, but the UK has not adopted the revised version of the European Social Charter.

The UK has just launched a review on the Human Rights acts, the act who implements the ECHR. The review will focus on the relationship between domestic courts and the ECtHR: how the duty to consider the ECtHR case law is applied in practice and whether a dialogue between the domestic courts and the ECtHR work effectively and can be approved. The review will focus on the impact of the Human Rights Act and its relationship between the judiciary, the executive and the legislator (the separation of power).

The review of the Human Rights Act runs alongside a review of the judicial review, that allows people to challenge the lawfulness of a decision of a domestic court.

With Brexit, the EU Charter of the Fundamental Rights is not applicable to the UK anymore. Hence, there will be substantial gaps in the protection of rights that do not have equivalents in other UK Human Rights Law. This means for instance, losing the right to non-discrimination and the possibility of individuals to address a Court to strike downs domestic legislation violating human rights.

There has been a penalisation of homeless people in UK Immigration Rules. The rough sleeping rule has applied to non-EEA nationals since 1 December and will apply to newly arriving EEA nationals from 1 January 2021.

Also, the UK is now using army barracks and camps for temporary or initial accommodation of asylum seekers. COVID-19 outbreaks have been recorded and there is no access to sanitation (soap) and medical assistance is widely documented.

Czechia and Slovakia:

Alexandra Dubova, Lawyer, Forum for Human Rights



Since the outbreak of COVID-19 many municipalities took finally care of homeless people. During the spring wave camping sites were used. In the colder months, municipalities used hotels to house homeless people.

On the hindsight, in Slovakia and Czechia there were huge problem for social and affordable housing already before the pandemic, and COVID-19 only exacerbated these issues.

Evictions:

Evictions are still going on both in Czechia and Slovakia, even now during winter. There is no moratorium on evictions. In Czechia there has been done a legal amendment during spring 2020 to ban evictions if the tenants had financial problems due to the pandemic.

Nevertheless, many low-income households have rent contracts of 1- 6 months, so after the end of the rent contract, the eviction remains possible.

In recent years there has been a retrogression in housing rights in Czechia and Slovakia, mostly targeted against Roma population.

Sweden:

Martin Enquist-Källgren, Lawyer, Stadmissionen

Evictions:

In Sweden there is no moratorium on evictions. There was a discussion about it in the Swedish Parliament, but the government has refused such a moratorium with the argumentation that the Swedish welfare system is able to protect people who are in poverty during the pandemic.

There have not been special measures protecting tenants, but big public landlords have stopped evicting people. In Sweden evictions are executed by a governmental agency. According to that agency, there has been a 10% decrease in evictions during the pandemic.

The government has introduced measure to support people who own properties as the government made it possible for them to stop paying mortgages. Companies have received financial subsidies to avoid people being fired.

Slovenia:

Milena Smit, Activist, Slovenian Tenants association

In Slovenia, a new housing legislation has been adopted recently. Housing rights in Slovenia are oriented towards ownership and gives all benefits to homeowners. In Slovenia around 80% of the houses are privately owned. In Ljubljana, the government and private companies are committed to a gentrification process.

The decision from the collective complain from 2008 is not respected.

Evictions:

There is no moratorium, but a thick social protection of the NGOs and connections that existed already. No changes were admitted during Covid but now there is a discussion in the Parliament.

The Ministry for Culture ended the contract with the NGOs on the cultural sphere which occupied before former barracks of the Yugoslav army and were active in helping vulnerable people. Then the city of Ljubljana has evicted some organisations with police force without the basis of a judicial decision.