

Social Housing guidelines

Chapter IV: The legal framework – first draft by Claire Roumet, Secretary General of CECODHAS

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Europe is divided in between countries with a right to housing included in constitution or laws and countries without. Of course it does not mean that in some countries there is more homeless than in others, the link between housing right and access to housing needs to be demonstrate. However, almost all European countries have signed international convention and charter of fundamental rights including right to housing and/or right to housing allowance (European Charter of Fundamental rights included in the newly ratified European Constitutional Treaty). What is more important is the implementation of this right and the responsibility of the State in its implementation. As a tool to implement the right to housing, social housing is now considered, in the European Union scene as a services of general interest and all EU Member State agreed on it.

Each part of this chapter will describe the situation in few EU member states to illustrate the diversity of social housing systems.

4.1: Right to housing and its implementation

The existence of a right to housing in constitution mainly depends of the historical background of the country and of its “legal tradition”.

In Denmark, one of the top priorities of Danish national policies is to provide the whole population with sound and adequate housing. The 2001 Housing Package entails several elements such as facilitating access to housing for students and young households and lower income groups. There are also efforts to eradicate social segregation and avoid the emergence of ghettos.

The Constitution Act of Finland provides that it is the duty of the public authorities to promote everyone’s right to housing and to support attempts by individuals to find housing on their own initiatives. National housing policy aims to further social development and progress towards greater equality, while promoting environmental sustainable development. Local authorities are responsible for improving standards of housing within their area.

In Germany, there is no specific mention of the right to housing on a federal state level, but the right to housing is included in some of the Länder's own constitutions. Article 14 of the fundamental law of the RFA 1949 guarantees a right to property.

In Netherlands, The Woningwet (Housing Act) was passed in 1901 and has been subject to a series of amendments since. It lays down building regulations and standards and

determines the organisation and subsidies for the housing sector. Rights and obligations of all levels of government and social housing associations are laid down in a set of legislative measures. The most important rule is the BBSH, which details performance areas for associations. Other important acts include the Housing Allocation Act (Huisvestingwet) - determining how home seekers are allocated homes, the Property Subsidies Order outlining how government backed Local Authorities fund to third parties e.g. housing associations and finally building regulations.

In Italy, The State defines the legal framework for policies relating to housing and their budget. Their measures are then implemented by the regions and the municipalities. Given that funding for housing originates from deductions from salaries and companies in the private sector, housing has been prioritised for the families of Italian workers. Nevertheless following a ruling by the European Court of Justice, which ruled that the failure of Italian housing policy to cater for immigrants or nationals of other EU states was contrary to the EU law, access to housing was widened.

In Poland, Art. 75. 1. of the POLISH constitution states that public authorities conduct a policy favorable to satisfying the housing demands of the citizens and in particular oppose homelessness, support social housing construction and support those activities of citizens which aim at obtaining their own dwellings. The protection of tenant rights is determined by an act of Parliament.

In 2000, the Swedish Parliament re-adopted a law that had been abolished in 1993 which states that the municipalities should plan the local provision of housing so that all the people living within the municipality have access to decent housing. The law also encouraged the establishment of local housing agencies if necessary. Furthermore there is no right to housing for the homeless, but there is an obligation on the municipalities to provide temporary shelter for those cases of an emergency.

Portugal is one of the first countries to include a right to housing in its constitution. In Article 65 of its 1976 Constitution it states 'everyone shall have the right to a dwelling of adequate size, satisfying standards of hygiene and comfort and preserving personal and family privacy'.

In UK, The 1977 law, later amended by the 1996 Housing Act states that councils have an obligation to house persons who they define as 'homeless', or having 'serious problems' such as those who are pregnant, families with children, old people. The 'right to housing' is designed to assist people who fit into these categories. Furthermore the act also states that the authorities are obliged to pay particular attention in not omitting such people from the system. Homelessness criteria are subject to separate regulations in each UK country.

The Spanish Constitution provides for the right to housing of the Spaniards. Art 47 of the Constitution states: 'All Spaniards are entitled to enjoy decent and adequate housing. The public authorities shall promote the necessary conditions and shall establish appropriate standards in order to make this right effective'.

As we can see, general provisions are usually declined in housing acts at federal level in order to give some content to the right to housing in reality.

4.2: Treatment of the social housing in the different national legislations

In Denmark, when the former Ministry of Housing and Social Affairs was abolished, competence for rent legislation was transferred to the Ministry of Social Affairs. Furthermore the Rent Act governs rent legislation. The Ministry for Economic and Business Affairs deal with the financial aspect of not-for-profit housing including rules on building. In general it is the central government and the municipalities who are responsible for the social housing. The Planning Act stipulates rules concerning town planning and it govern municipalities actions when they are town planning.

In Austria, since 1987 housing has come under the relevant laws and administrative framework of the provincial *länder*, which have their own particular policies depending on the province. However the financing of housing is controlled by the Federal state. In particular the Minister of Economic Affairs manages housing policies at federal state level. Furthermore the municipality also features, as they are responsible for the construction of communal housing. Social housing organizations are charged with the building of housing of general interest, and finally subsidized housing is constructed jointly by the local councils and social housing organisations, together with increasingly more private companies.

In Finland, The Ministry of the Environment is generally responsible for housing policies. However, the ARA has a major role in the administration and management of state subsidies. The municipalities are the sole planning authorities with no government interference. This is in accordance with the 2000 Planning Act. Furthermore, with regards to construction, the Ministry of the Environment has authorized the Safety Technology Authority (TUKES) to carry out market surveillance of construction projects in compliance with the EU Construction Products Directive (CPD) and in accordance with certain stipulations from the Land Use and Building Act. The Land Use and Building Act renders it obligatory to have start-up meetings, and to use inspection reports and quality control-plans for construction projects

In Germany, Within the general rules stipulated by the Federal Act, the rules of assistance differ widely amongst the various *länder*, whereas it is the municipalities themselves who actually implement *länder*'s decisions. The municipalities' powers are confined to the specifications of the Fundamental Law of 1949 (art.28) and the *Länder*'s own constitutions. However these municipalities are subject to Federal Law which puts an obligation on the councils to financially cater for those in a 'particular danger'. On the whole the Federal States are in charge of the individual *länder*

In Italy, According to the Legislative Decree no. 112 of 31.3.1998 the Regions are responsible for social housing. However the Central Government does still have a say in areas such as stipulating housing service levels, the acquisition, collection, processing, distribution and evaluation of data on the housing market. The creation of a national observatory unit will do much to assist in this task. Furthermore the IACPs, the public social housing providers, are not responsible for their income as it is determined by the State and the Regions. However, they are under obligation to account for their spending.

In Netherland, the legal framework states that there was a need for the associations to appoint an internal supervisory body. The body advises management, monitors the work of the association and takes action where necessary. Although central government withdrew from the field the Minister of Housing still retained some powers of intervention. The minister will consider intervention after examining three documents produced by the associations which are (1) an annual report, (2) a review of statistics and forecasts and (3) a report of the local social housing, situation e.g. building, refurbishment. Furthermore the advice of the CFV and the local authority are also taken into consideration. In some specific cases the Minister of Housing also has powers to block plans by the associations taken without his prior permission. The associations also endeavour to show they act responsibly to society by promoting transparency of their policies, encouraging collaboration with others.

In Poland, In the 1990s there was established only one new policy programme in the social sector, the social rental housing. The programme was based on two solutions: provision of preferential long-term capital for the financing of the construction and modernisation of dwellings for lease, where rent payments cover both the credit repayment and the maintenance costs of the dwelling and establishment of a specific type of social landlord, the Social Housing Associations (TBS).

In Portugal, there are three administrative groups involved in the regulation of social housing in Portugal; firstly there is the central administration. The government is responsible for formulating social housing policies, adopting relevant legislation, arranging the financing systems as well as financially supporting the construction of social housing or low-cost dwellings and issuing grants for housing. Secondly the Regions are responsible for policies designed to promote social housing in their region and they are in charge of managing their social rental stock. One point of note is that there are two autonomous regions (Les Açores and Madère) and they both have limited legislative powers. Finally the local administration is responsible for urban development, promoting social or low-cost housing and managing it's stock of rental accommodation.

The Housing Associations in England are regulated by the Housing Corporation. The Housing Corporation is, in turn answerable to the government. However recent changes introduced in 2002, state that the National Audit Office (NAO), who are answerable to Parliament have been given the right to investigate spending by the Housing Associations in order to report before Parliament. In Wales, associations are regulated by the Welsh Assembly Government Housing Directorate, which retains responsibility for auditing the financial and governance performance of associations, although inspection of housing

services is being delegated to the Audit Commission in Wales. Associations in Scotland are regulated by Communities Scotland which works directly with the Scottish executive. Communities Scotland provides grants for new social housing developments and is responsible for all regulation and monitoring of social housing in both associations and local authorities. Associations in Northern Ireland are regulated by the Housing Executive.

In Spain, Art. 148-1°-3° 'regulations of the Territory, Urban Development and Housing' gives the task of overseeing the housing sector to the autonomous regions. Land policy also comes under the responsibility of the autonomous regions, however the councils govern certain aspects. The state is left with very limited competence and only can only intervene through its housing plans which itself is based on its jurisdiction in respect of the country's economic planning in accordance with Art. 149.13 C.E - the 'conditions and coordination of general planning of economic activity'.

Social housing revolves around 3 levels in most EU Member States: firstly the central government is responsible for establishing general guidelines for housing programmes, planning and distribution of credit and housing fiscality. Secondly, the regional authorities have competence in areas such as; housing and planning issues, in implementing housing policies which are set by the central government and in managing the public housing stock. Finally the local government is charged; with developing public housing stock, providing housing to the most vulnerable (like in UK for the homeless), planning development and controlling housing and local land patrimonies. In some countries the financing systems is devolved to the regional level and is not centralize. And in some other countries the housing policies is not yet decentralize. We must notice also that discrepancies exist between the responsibility of each level and their capacity to finance actions in this domain. This is for example the case of Italy today where regions do not have the same budget for their housing policies.

4.3: Contractual agreement between the different actors within social housing

In Austria, housing remains under the guile of the Länders, but the central state have control of the financing of social housing, in particular the Minister of Economic Affairs and the Minister of Justice co-ordinates the central state's housing policy. In order to control the sector, there are four principal housing policy instruments; the Tenancy Law Act, the Viennese Municipal Housing Schemes, the Non-Profit Housing Law (WGG), Flat property Law and the Housing Construction Subsidy Acts. The Wohnrechtsnovelle 2000 brought about some amendments in respect of Austrian Civil Law of housing, Landlord and Tenant Law, Flat Property Law, and Limited-Profit Housing Law.

In Germany, The rented social housing sector is based on conventions or agreements. A convention is a social and economic agreement freely entered into by the developers or investors for a fixed time period in consideration for an indemnity fee. They are between communes and a wide range of developers or investors (housing companies belonging to the communes or industrial groups, cooperatives, institutional or private investors or ordinary households). The state governments authorities or Länder are responsible for the

'convention rules' for housing, and the implementation of these rules is delegated to the municipalities. Essentially in return for providing housing for a limited section of the demand, the developer is granted assistance by the state (Land). After the verification of criteria, a social housing voucher may be granted. During the first 20 years of the convention, the municipality can propose three candidates per dwelling to any developer. The investor can then refuse the candidate on grounds such as insolvency or anti-social behaviour. Following this the municipality can propose individual solutions such as rent guarantees. Certain municipalities can acquire additional occupation rights from the developers. This is done on a case-by-case basis, and is subject to a fee which itself depends on the items such as the profile of the households to be accommodated, the duration of the convention etc.

In Italy, The IACP's (Istituto Autonomo per le Case Popolari) are organisations of the public sector who construct and manage social housing. In 1998 they managed 73% of public rental housing out of a total of 822,000 houses, however the number of homes which could be sold was 110,000. IACP managed homes are not only managed the IACPs, but also by national, municipal and other public bodies. However under Legislative Decree no. 112 of 31.3.1998 the Regions are charged with the overall responsibility for social housing. However the Central Government are still responsible for areas such as the determination of principles and general objectives for public social housing under their social policy objectives, as well as the drawing up (with the Regions and administrations) of social housing programmes of national interest. The Regions and the local authorities' duties include; planning financial resources, selecting allocation criteria for social housing and rent. Finally housing co-operatives are also present but mainly build for their members.

This system is currently undergoing changes: A continuous decentralisation of the management of the public rental housing stock is underway, mainly through the creation of Municipal Housing enterprises and companies composed by the Municipalities, IPSS and other private and public entities. In the near future, housing Co-operatives may also have a major role to play in this field. However, the implementation of this process of decentralisation of the management of the housing stock requires significant improvements. In order to increase its efficiency and to increase cooperation between the management bodies and the inhabitants of the dwellings. At present, the housing stock held by the central administration (through IGAPHE) is being transferred, at no cost, to the municipalities and social organizations.

In Sweden, the state is responsible for the main policy of housing. Homeowners, co-operatives and rented housing corporations borrow the capital they need on the capital market at market prices. The municipality decides when and where housing is built. The regional authorities have very little to do with the housing sector. The housing organisation then decides whether to construct or renovate housing, or to take out a relevant on the market. The housing is then allocated by the housing organisation itself or by a housing association run by the municipality itself. Almost every municipality has it's own independent not-for-profit housing organisation. SABO is the federation for the municipal owned housing organisations, and now includes 300 member organisations.

These member organisations or SABO organisations own and manage around 900,000 dwellings all over the country (22% of the total stock) and they can compete on the housing market on the same terms as privately owned housing. However the SABO organisations are often set specific targets by their municipal owners. Their main tasks are to produce decent housing for all kinds of households. Furthermore there is a very particular system of housing cooperatives in Sweden. HSB and Riksbyggen are the main actors in this sector. Housing dependant on these cooperatives is equivalent to 700,000 apartments or 17% of the total housing sector. HSB currently has close to half of this market.

In the UK, social housing is mainly managed by the local authorities, housing associations and by the Northern Ireland Housing Executive. The government ensure that local allocation plans and housing strategies, which are drawn up between the local authorities and the landlords, correspond to national directives. Even though housing associations are increasing their share of the national stock, local authorities still possess almost twice as many properties as housing associations in England. Housing associations are independent not-for-profit organisations that are registered with the English Housing Corporation, the Welsh Assembly Government Housing Directorate and Communities Scotland. Registered associations are known as 'Registered Social Landlords (RSLs)'. The local authorities have no control on those organisations with registered social landlord (RSL) status. On a local level in England, Regional Development Agencies have been introduced by the Labour Government, charged with the regeneration of areas. The Housing Corporation receives regular reports from housing associations and has a range of statutory powers to ensure good governance, financial visibility and performance achievement. Similar powers are exercised in the other three countries by Communities Scotland, the Welsh Assembly Government and Northern Ireland Housing Executive.

In Portugal, It is the municipalities together with the IPSS (Social Solidarity Private Institutions) who are responsible for the construction of most social housing (44%). Private companies are responsible for building 42% of social housing with 12% coming from co-operatives. Voluntary associations have become increasingly active in the housing of homeless.

In conclusion:

In most Member states, three actors of social housing have developed: the not for profit organizations, the public housing providers and the co-operatives. Few countries have opened the social housing sector to private developers but it only exist at a larger scale in Germany. In Spain, where private actors are invited as public providers to answer call of tender, they are not interested by this segment of the market and in other Member States it is still marginalized. It would be interesting to investigate more in deep the requirements imposed to social housing actors and see what are the one important to deliver effectively social housing.