



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

11 March 2020

Case Document No. 1

**European Federation of National Organisations Working with the Homeless
(FEANTSA) v. Czech Republic**
Complaint No. 192/2020

COMPLAINT

Registered at the Secretariat on 19 February 2020



Jan Malinowski
Executive Secretary of the European Committee of Social Rights
Secretariat of the European Social Charter
Directorate General of Human Rights – DG II
Council of Europe
7075 Strasbourg Cedex
social.charter@coe.int

Brussels, 17 February 2020

COLLECTIVE COMPLAINT

**submitted under the Additional Protocol to the European Social
Charter**

Providing for a System of Collective Complaints

FEANTSA V. THE CZECH REPUBLIC

Contact: maria.jose.aldanas@feantsa.org and freek.spinnewijn@feantsa.org

Contents

1. PURPOSE OF THE COMPLAINT	4
2. ADMISSIBILITY	4
2.1 STATE PARTY	4
2.2 RELEVANT ARTICLES.....	4
2.3 STATUS OF FEANTSA	5
3. COMPLAINT.....	5
4. DOMESTIC LAW AND POLICY IN THE CZECH REPUBLIC	6
5. ISSUES UNDER THE 1961 EUROPEAN SOCIAL CHARTER.....	6
5.1 ONGOING THREATS TO SECURITY OF TENURE AND RISK OF EVICTION FOR POOR HOUSEHOLDS	6
5.1.1. Changes to the law on renting that affect security of tenure	6
5.1.2. Inadequate protection for hostel residents with a temporary accommodation agreement	7
5.1.3 Eviction in practice.....	8
5.1.4 Heightened threat of eviction for Roma citizens	8
5.2 ISSUES RELATING TO HOUSING AFFORDABILITY	9
5.2.1 Disproportionate reductions in housing supplements provided, given the manifest continuing need	9
5.2.2. Absence of much-needed social housing legislation	12
5.3 ISSUES RELATING TO SOCIAL AND RACIAL SEGREGATION	13
6. NON-COMPATIBILITY WITH THE EUROPEAN SOCIAL CHARTER	17
6.1. Article 16 of the European Social Charter.....	17
6.2. Non-discrimination guarantees in the Preamble to the European Social Charter	18
7. CONCLUSION.....	18

1. PURPOSE OF THE COMPLAINT

The European Federation of National Organisations Working with the Homeless (FEANTSA) asks the European Committee of Social Rights (the Committee) to find that legislation, policy and practice regarding rental housing and housing supplements in the Czech Republic are not compatible with the relevant provisions of the Social Charter (“the Charter” or “the 1961 Charter”).

Summary:

The Czech legislation, policy and practice regarding housing are not compatible with the relevant provisions of the 1961 European Social Charter, in particular Article 16, the right of the family to social, legal and economic protection, taken by itself or read in conjunction with Article E on non-discrimination. In recent years, various issues have come to light in the Czech Republic following the implementation of new legislation and policy. More generally, formal legislation on social housing is absent. The issues arising are:

- i. Ongoing threats to security of tenure and risk of eviction for poor households as a consequence of rising prices in the rental market and changes to the legislation on renting;
- ii. Disproportionate reductions in housing supplements provided, given the manifest continuing need;
- iii. Designation of some territorial areas as ineligible for certain forms of housing benefit;
- iv. Intensification of social and racial discrimination, including racial segregation;
- v. Social control measures that have a negative impact on the effective exercise of housing rights.

2. ADMISSIBILITY

2.1 STATE PARTY

The Czech Republic is Party to the Charter and has accepted the Collective Complaints procedure, evidenced by its signing of the 1995 Additional Protocol on 4 April 2012.

2.2 RELEVANT ARTICLES

Article 16 – The right of the family to social, legal and economic protection; taken by itself or read in conjunction with Article E on non-discrimination.

Article 16 of the Charter reads as follows:

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

The Committee has consistently held that “Articles 16 and 31, though different in personal and material scope, partly overlap in several areas relating to the right of families to housing. In this respect, the provisions for adequate housing and forced eviction are identical under Articles 16 and 31.”¹

The matters at issue in the current Complaint are understood as relevant to Article 16, taken by itself or read in conjunction with the non-discrimination clause in the Preamble to the Charter.

The Preamble to the 1961 Charter sets out that “the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin.”

2.3 STATUS OF FEANTSA

FEANTSA currently has more than 100 member organisations, working in 26 European countries. Most of FEANTSA's members are national or regional umbrella organisations of service providers that support homeless people with a wide range of services, including housing, health, employment and welfare support. They often work in close cooperation with public authorities, social housing providers and other relevant actors.

FEANTSA has consultative status with the Council of Europe, and as such is one of the organizations authorized to lodge Collective Complaints under the Social Charter.

As part of this procedure, Stepan Ripka has been appointed by FEANTSA as advisor in accordance with Rule 25-2 of the Committee’s Rules of Procedure.

3. COMPLAINT

The Czech legislation, policy and practice regarding housing are not compatible with the relevant provisions of the 1961 Charter. In recent years, various issues have come to light in the Czech Republic following the implementation of new legislation and owing to the absence of social housing legislation:

- i. Ongoing threats to security of tenure and risk of eviction for poor households;
- ii. Disproportionate reductions in housing supplements provided, given the manifest continuing need;
- iii. Designation of some territorial areas as ineligible for certain forms of housing benefit;
- iv. Intensification of social and racial discrimination, including racial segregation;
- v. Social control measures that have a negative impact on the effective exercise of housing rights.

These five issues will be addressed after a brief explanation of the Czech legislation and policy around housing.

¹ ERRC v. Bulgaria, Complaint No. 31/2005, Decision on the Merits of 18 October 2006, para. 17; ERRC v. France, Complaint No. 51/2008, Decision on the Merits of 19 October 2009, para. 89; COHRE v. Italy, Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, Decision on the Merits of 25 June 2010, para. 115.

4. DOMESTIC LAW AND POLICY IN THE CZECH REPUBLIC

- 1.1 **The System of Assistance for those in Material Need** is Regulated by Act no. 111/2006 Coll., on Assistance for those in Material Need² (as amended).
- i. Section 33(d) provides municipalities with the possibility to designate an area as an “area with increased occurrence of socially undesirable phenomena”;
 - ii. Section 34 of the amendment to this law reduces the maximum level of justified housing costs covered by welfare benefits from 90% to 80% of normative housing costs; those in receipt of these benefits will thus receive less money to cover their housing expenses.
- 1.2 **The Civil Code**, in force as of 1 January 2014, regulates rental tenancies and the grounds for termination of rental contracts.
- 1.3 **The “Strategy for Preventing and Tackling Homelessness Issues in the Czech Republic until 2020”** adopted by the government in August 2013. In order to develop this Strategy, an Expert Group was created, attached to the Ministry of Labour and Social Affairs (MoLSA) Commission for Social Inclusion. NGOs working on homelessness, experts from relevant ministries and academics are represented in the group. Since the adoption of the Strategy, the Expert Group has supervised and monitored the implementation of particular measures. The Strategy is also based on economic analysis of the costs of homelessness and of the various solutions to it.
- 1.4 **The Czech Republic Social Housing Concept 2015-2025**. This Strategy is a document identifying the most significant issues in social housing in the Czech Republic and defining the measures that should be implemented over the next 10 years to achieve the goals set in the field of social housing. The next steps in light of this Strategy should have been the preparation of a new Social Housing Act, which nonetheless still has not been passed at the time of drafting this Complaint.

5. ISSUES UNDER THE 1961 EUROPEAN SOCIAL CHARTER

As described above, FEANTSA has identified five issues that are not compatible with the relevant provisions of the 1961 Charter. These issues will be substantiated below.

5.1 ONGOING THREATS TO SECURITY OF TENURE AND RISK OF EVICTION FOR POOR HOUSEHOLDS

5.1.1. Changes to the law on renting that affect security of tenure

Czech legislation on renting is comprehensively defined in the Civil Code (Law No. 89/2012 Coll. Civil Code). Under the previous legislation (Act No. 40/1964 Coll. Civil Code (as amended)), prior to January 2014, if a landlord terminated a rental contract, the tenants were entitled to “substitute housing” (in Czech: *bytová náhrada*)³ provided by their landlord. The landlord was obliged to find and pay for the costs of relocation of the tenant to alternative and reasonable housing (either in an apartment or a shelter). This obligation to provide substitute housing was reportedly causing inequality between the parties. There were many disputes since the termination grounds were broad and, to some extent, vague.

² Ministry of Labour Social Affairs (MoLSA) <https://www.mpsv.cz/web/cz/aktualni-zneni> and <https://www.mpsv.cz/web/en/assistance-in-material-need>

³ See: <https://www.pravniprostor.cz/clanky/rekodifikace/bytove-nahrady-po-1-1-2014>

The new Civil Code, which entered into force on 1 January 2014, narrowed the grounds for termination. This means that landlords are no longer obliged to provide tenants with substitute housing if the landlord terminates the rental agreement. The reason for the scrapping of this measure was the disproportional restrictions on the lessor's ability to terminate the lease even if there were legitimate reasons to do so. This requirement could have been particularly disproportionate if the reason for the termination of the lease was a violation of the lessee's obligations.

If the rental agreement comes to an end in accordance with the terms and the tenant does not vacate the premises, the landlord may request a court order to clear the premises. This means that the tenant and their possessions shall be removed from the premises. The procedure is strictly set by law and the eviction must be allowed by the court. There is no difference between private housing and public housing in the eviction procedure as provided under Czech law.

The eviction process may commence if the tenant does not vacate the premises after termination of the rental contract. The landlord may file a motion for eviction with the court after the tenant was supposed to vacate the premises. If the motion is upheld, the court orders the tenant to vacate the premises within an appropriate timescale.

Should the tenant not vacate the premises after this additional period granted by the court, a forced eviction may be ordered. Such an eviction shall be carried out even if it renders the tenant homeless (however, eviction cannot be carried out if the tenant is ill and bedridden, or if a tenant is pregnant or has recently given birth (up to a maximum of six weeks prior to the forced eviction)).

Although the changes to the law have been counterbalanced by other governmental policies (social inclusion programs) to complement the intended shift in social obligations from landlords (as private parties) to the government, these other policies have proven insufficient at this stage to offer adequate alternative accommodation to ensure the State's legal obligation to prevent homelessness under the Charter, as evidenced by data and other information provided below.

5.1.2. Inadequate protection for hostel residents with a temporary accommodation agreement

Due to the lack of affordable housing, very vulnerable, poor or excluded population groups have been housed in "hostels". Hostels are flats or rooms in private buildings where residents do not have standard rental contracts, do not receive a local residence permit, and frequently pay exorbitant rents for small rooms or flats that are of low quality (shared kitchen, shared sanitation facilities, overcrowding). Hostels can also be divided into those that are approved and those that are not approved in accordance with property management regulation. It is the regional hygiene board that gives this approval to hostels. Housing benefit is granted only to residents in approved hostels.

Where a tenant leases the premises for the purpose of permanent occupation (as opposed to temporary lodging (in Czech: *zajistit bytovou potřebu*), the statutory regulations provide increased protection to the tenant (e.g. statutory notice period, tacit prolongation, the landlord may only terminate the contract for an indefinite period on the grounds listed in the Civil Code, etc.).

Contrary to this, people living in hostels are usually not granted these statutory protections, since temporary accommodation agreements are concluded for shorter terms and are intended to secure temporary lodging only. Compared to that provided under a rental agreement, the statutory protection afforded to the user of premises available under a temporary accommodation agreement is non-existent.

The accommodation is defined as being available under a temporary agreement, according to which the accommodation provider undertakes to provide short-term accommodation to a guest for a stipulated period in a facility, and the guest undertakes to pay the accommodation provider for related services. No official statistics are available, however it seems that the vast majority of hostels primarily make use of temporary accommodation agreements that are repeatedly renewed. The term of the temporary accommodation agreements used in hostels is usually from one to three months. In this way, the hostels make sure that the tenants have enough money to pay for another term.

The only protection provided to hostel residents is that termination of the lease is possible only subject to prior notice and following a breach of the resident's obligations or antisocial behaviour on the part of the resident. This protection is not specific to accommodation agreements but applies as a general principle to all agreements.

FEANTSA is of the opinion that the general use of temporary agreements by hostels generates insecurity of tenure and increases the risk of eviction for poor and vulnerable households, and is therefore not compatible with the relevant obligations of the Charter, as we will argue.

5.1.3 Eviction in practice

Although data is difficult to procure and national data is not publicly available, we know that hundreds of people have been evicted in recent times in the Czech Republic. In Ustí nad Labem in 2018, approximately 230 people (of whom about 80 were children) living in the residential hostels at Klíšská 53 and Purkyňova 14 were at risk of eviction.⁴ The city of Brno's 2018 development strategy document states, "[a]s of the end of May 2017, there were 333 tenants in municipal flats, without a rental contract, of whom 258 tenants were the subject of judicial action for eviction."⁵ A report issued by the municipality of Ostrava-South in March 2018 states that, during supervisory visits to 288 flats in Ostrava South, eviction notices were issued for 12 of the dwellings.⁶ Civil society organisations report that in recent years there have been multiple evictions – primarily of Roma people – in the city of Ostrava, particularly from the municipalities Slezska Ostrava, Viktovice, Marianske Hory and Poruba. The Poruba evictions are currently ongoing, as noted below.⁷

5.1.4 Heightened threat of eviction for Roma citizens

Particularly alarming is the threat of eviction experienced by Roma people, in some cases whole neighbourhoods. In October 2018, people in Skautská and Dělnická (streets in the Poruba district, City of Ostrava) were given eviction notices. They were among several hundred people currently threatened with

⁴ Families with children facing eviction sue Czech city for putting them at risk of homelessness:

<http://www.romea.cz/en/news/czech/rodiny-s-detmi-z-vystehovavanych-ubytoven-v-usti-nad-labem-zaluji-mesto-pro-ohrozeni-bezdomovectvim>

Czech Police respond to incident between NGO social workers and Romani parents about impending evictions:

<http://www.romea.cz/en/news/czech/czech-police-respond-to-incident-between-ngo-social-workers-and-romani-parents-about-impending-evictions> (June 2018, accessed September 2019)

⁵ https://brno2050.cz/wp-content/uploads/2017/09/Strategie_bydleni-analyticka_cast.pdf, p.44 (accessed 26 February 2019).

⁶ https://www.ostrava-jih.info/wp-content/uploads/2018/03/JL_03_2018_web.pdf (accessed 26 February 2019), p.5.

⁷ Interview with Kumar Vishwanathan, Life Together NGO, Ostrava, 27 February 2019.

eviction from around ten buildings evidently earmarked for development. These flats belong to the largest private owner of housing in the Czech Republic (see also 5.3. “Issues relating to discrimination” below).

5.2 ISSUES RELATING TO HOUSING AFFORDABILITY

Approximately 18.1% of all Czech households (776,000 households) live in rental housing. The Czech Republic is among the countries where housing costs represent the largest proportion of poor households’ disposable income, reaching 46%.⁸ At least 54,000 households are currently in acute housing need in the Czech Republic. Of these, approximately 9,600 are families with dependent children. The rest are childless households (individuals or couples).⁹

Ambitious draft legislation on social housing was developed in 2016, prioritising the construction of affordable housing and access to housing for young people and families with children, but this legislation was never adopted. During the present government’s mandate, policy directives have been developed and a consensus exists around the transformative potential of investing in social housing for homeless people – but the number of affordable housing units for these people is largely insufficient. Despite the existence, since 2003, of central government funding for the development of affordable rental housing for people in need, the use of these funds by local authorities has been limited.¹⁰

In addition, cities do not usually have an overview of the number of people in housing need living on their territory. They do not collect or evaluate the necessary data on a regular basis and are therefore incapable of taking the necessary measures. If municipalities offer a service they call “social housing”, it is set up so that on average only a maximum of 15% of these flats reach families who are in acute housing need. Moreover, municipalities often do not have the necessary housing stock and/or do not allocate the necessary amount of flats to those in need of social housing. Although some cities own thousands of municipal flats, and some even more than this, and in these cities hundreds of families live in acute housing need, only a few of these families ever get into social housing (usually no more than ten families per year. In in the most active cities like Brno, this number is 18 families).¹¹

5.2.1 Disproportionate reductions in housing supplements provided, given the manifest continuing need

In the Czech Republic, households in a difficult financial situation are entitled to apply for a range of State benefits. A household may include a single person, a couple or a whole family (including children) living together. Two of these State benefits are provided in the form of pecuniary support to partially cover housing costs: (i) **Housing allowance** (in Czech: *příspěvek na bydlení*) and (ii) **Housing benefit** (in Czech: *doplatek na bydlení*). Each of these serves a different purpose within the mechanism of State welfare support and is granted in different scenarios. They are both calculated on a case-by-case basis in accordance with the housing costs involved.

⁸ 4th European Index on Housing Exclusion, FEANTSA and Abbé Pierre Foundation, 2019

⁹ *Platforma pro sociální bydlení a LUMOS*, “Zpráva o vyloučení z bydlení za rok 2018”, April 2019, <https://socialnibydeni.org/wp-content/uploads/2019/04/Zpr%C3%A1va-o-vylou%C4%8Den%C3%AD-z-bydlen%C3%AD-za-rok-2018.pdf>, p. 7

¹⁰ Country zoom, Czech Republic FEANTSA, 2018: https://www.feantsa.org/download/cz_5132151200565295171.pdf,

¹¹ *Platforma pro sociální bydlení a LUMOS*, “Zpráva o vyloučení z bydlení za rok 2018”, April 2019, <https://socialnibydeni.org/wp-content/uploads/2019/04/Zpr%C3%A1va-o-vylou%C4%8Den%C3%AD-z-bydlen%C3%AD-za-rok-2018.pdf>, p. 4

Housing allowance is primary State welfare support and covers part of households' housing costs, regulated by Act No. 117/1995 Coll. on State Welfare Support (as amended) (the Welfare Benefits Act). This is a demandable benefit, meaning that the applicant has the right to receive the allowance if they meet the statutory requirements, subject to no discretion on the part of the respective State authority.

Unlike housing benefit, housing allowance is provided to owners or tenants of premises, but only if their Registered Permanent Residence (RPR) is in the said premises. Thus, people living in other forms of accommodation (e.g. subletting, hostels or public lodgings, unless the applicant lives in the hostel or public lodging based on a rental agreement) or a place other than their RPR (e.g. students or workers living outside their homes) might be excluded from the possibility of applying for this State support. The amount of housing allowance is calculated on a case-by-case basis for each applicant (or applicant's family) as the difference between the monthly deductible housing costs and the family's average applicable income.

Housing benefit was introduced in 2007 by Act No. 111/2006 Coll., on Assistance for those in Material Need (as amended) (the Assistance for those in Material Need Act) to reduce families' dependence on State welfare support (including housing allowance). It is a secondary source of State support and is intended only for those who do not qualify for housing allowance, or who do not have enough funds to cover their housing costs despite receiving other State support (including housing allowance). Housing benefit is intended to have more of a motivational role, so its allocation and amount are conditioned by certain requirements, e.g. the applicant's efforts to find suitable housing or a job.

The spectrum of eligible applicants is generally broader and includes landlords and persons using their premises based on any agreement (including subletting), but also people who live in premises not designated for housing such as hostels or public lodgings. An RPR is not required. Applicants who live in premises for housing purposes (as opposed to temporary lodging) can reapply for housing benefit once they meet all the statutory requirements. However, applicants living in non-residential premises such as hostels or public lodgings are entitled to receive housing benefit only in special cases, to be scrutinized by the responsible authority, and on condition of reasonable and desirable behaviour on the part of the applicant (e.g. actively looking for a flat or a job, undergoing treatment for alcohol addiction, etc.) and the applicant keeping their dwelling in an adequate state of cleanliness and repair.

Allocation of both forms of housing-related welfare benefits has dropped in recent times. Over the course of only three years, from 2015 to 2018, the level of housing benefit paid to households living in "hostels" decreased dramatically (by 47%). This decrease, however, does not apply only to benefits paid to hostels: the total number of housing benefit ("*doplátek na bydlení*") for the poorest households decreased by 42% between 2015 and 2018. The reduction is therefore not only a phenomenon affecting hostels.

Benefits received by households in hostels amount to 19% of all benefits paid. The majority of the benefits go towards paying for rental housing – although this does not mean recipients have a proper home, since a large proportion are housed in substandard housing. For example, people living in rented flats that lack basic services and equipment such as running or hot water, electricity, toilet, bathroom or shower, kitchen

or kitchenette.¹² The relevant legislation does not ensure an adequate standard of housing quality.¹³ Moreover, if people living in hostels were to point out the substandard quality of housing there, they would run the risk of not receiving housing benefit for that hostel and at the same time not being able to find other housing.

Although the office of the Ombudsman in the Czech Republic has the power to defend persons against the conduct of authorities and other State institutions, this mandate does not allow the Defender of Rights to intervene in private law relationships or disputes (including around subletting or accommodation agreements). Complaints about discriminatory conduct are the only exception – in these cases the Defender may also intervene in the private sphere.¹⁴

The number of single-person households and families living in hostels receiving housing benefit has decreased. However, the number of families and the number of children living in hostels has not decreased as dramatically as the number of single households. Hence, although the total number of children in households in receipt of housing benefit living in hostels has decreased, their presence among the hostel population in receipt of housing benefit has increased (rising from 19% in 2015 to 25% in 2018).

Housing benefit paid to hostels	2018	2015	Absolute difference	Relative difference
Total number of housing benefit applications	7,611	14,264	-6,653	-47%
Total number of persons in recipients' households	12,214	20,743	-8,529	-41%
Cases of benefits paid to families with at least one child under 18	1,356	1,948	-592	-30%
Total number of children in recipient families	3,007	3,921	-914	-23%
Children per family	2.2	2.0	0.2	10%
Cases of benefits to households consisting only of elderly people (all household members 65+)	598	352	246	70%

Source: Report on Housing Exclusion in 2018¹⁵

At the same time, the reduction in the level of housing benefit paid cannot simply be interpreted as a reduction in the number of households in need of housing. Only about 60% of families and 40% of childless

¹² Platforma pro sociální bydlení a LUMOS, "Zpráva o vyloučení z bydlení za rok 2018", April 2019, <https://socialnibydeni.org/wp-content/uploads/2019/04/Zpr%C3%A1va-o-vylou%C4%8Den%C3%AD-z-bydlen%C3%AD-za-rok-2018.pdf>, p. 6

¹³ Act No. 111/2006 Coll., on Assistance for those in Material Need in Section 33 (6) and Sections 33a and 33b together with Act No. 183/2006 Coll., on town planning and the building code (The Building Act), and Act No. 258/2000 Coll., on the protection of public health and on changes to certain related acts ("the Public Health Protection Act").

¹⁴ Mandate of the Public Defender of Rights: <https://www.ochrance.cz/en/mandate-of-the-public-defender-of-rights/>

¹⁵ Platforma pro sociální bydlení a LUMOS, "Zpráva o vyloučení z bydlení za rok 2018", April 2019, <https://socialnibydeni.org/wp-content/uploads/2019/04/Zpr%C3%A1va-o-vylou%C4%8Den%C3%AD-z-bydlen%C3%AD-za-rok-2018.pdf>, p. 19

households in hostels receive housing benefit.¹⁶ Of course, in some cases, the reason for households losing their entitlement was an improvement in the family's income situation thanks to a better labor market position, but available data suggest that some households have lost their entitlement to benefits owing to various restrictive measures and have fallen even further into poverty.

There have been several amendments to relevant laws adopted since 2015, all targeting the “poverty business” – i.e. the short-term or long-term letting of properties unfit for habitation (usually hostels or public lodgings) to tenants for extortionate rents. The general aim of the amendments is to reduce public spending and create an efficient system for the payment of allowances.

As of 2018, every item in an application for housing allowance must be broken down into specific items, giving a detailed overview of the household's expenses, which may cause delays in processing the applications. This has rendered the process considerably more complex; up until the amendment brought in by the Welfare Benefits Act, a simple statement of the overall costs was enough.

The 2015 amendment to the Assistance for those in Material Need Act: (i) stipulated that housing benefit could only be paid to one person in the household, even when more people are eligible for housing benefit in that household; and (ii) defined the dwellings in which people were to live and stipulated standards of living that precluded some people from receiving the benefit. An amendment in 2017 further tightened the rules for receiving housing benefit. The amendment also introduced the option for cities to declare certain parts of the municipality to be areas with an “increased incidence of socially undesirable phenomena” (which will be further described below), which could also lead to a reduction in the amount of housing benefit received.

5.2.2. Absence of much-needed social housing legislation

There is no current legislative process on social housing in the Czech Republic, despite the fact that the adoption of such legislation was initially included in the Czech Government statement of intent and the fact that there is a need for affordable housing. Public statements by the present government suggest that they plan to invest in construction of new houses and adopt other measures instead of adopting a comprehensive Act on social housing.

The government has declared 15 measures that are supposed to make up for the absence of social housing regulation. Among the measures are construction subsidies, debt relief and the regulation of apartment lettings in trade law. These measures do not sufficiently solve the social housing problem, since existing laws already regulate most of these things. Some cities have managed to regulate social housing in their territories independently of Government.

The concluding observations of the Committee on the Elimination of Racial Discrimination (CERD) from 2015 express concern at the absence of legislation or policy on social housing and the fact that Roma people continue to be denied access to adequate housing, particularly social housing. The CERD recommended that the Czech government adopt social housing legislation and establish a comprehensive social housing system with a focus on Roma people and ethnic minorities in general.

FEANTSA is of the opinion that the lack of social housing legislation to guarantee access to adequate housing for poor households is incompatible with the relevant obligations of the Charter. In *FEANTSA v.*

¹⁶ Ibid.

France,¹⁷ the Committee noted that there must be an adequate supply of affordable housing for the relevant obligations of the Charter to be met. Housing is deemed to be affordable when the household can pay the initial costs (deposit, advance rent), the current rent and/or other costs (utility, maintenance and management charges) on a long-term basis and still be able to maintain a minimum standard of living, as defined by the society in which the household lives (Conclusions 2003, Sweden, p.655).

5.3 ISSUES RELATING TO SOCIAL AND RACIAL SEGREGATION¹⁸

The Czech Republic relies on a survey carried out by the Ivan Gabal Sociological Institute, first carried out in 2006 and most recently updated in 2015, to define “socially excluded localities”. According to the 2015 data, 95,000-115,000 persons live in 606 identified “socially excluded localities” in 297 municipalities. These have 700 “hostels” in them. The total number of excluded localities has more than doubled since 2006, when it was 310 localities, with 60,000-80,000 inhabitants. Most of the affected regions are in the north and east (Moravskoslezský, Ústecký, Karlovarský and Olomoucký Regions), including cities such as Ostrava, Karvina and Usti nad Labem. While some “socially excluded localities” are rural communities, generally without significant Romani communities, the majority were urban ghettos.¹⁹

The majority of persons living in “socially excluded localities” both in 2006 and 2015 were Romani. In contrast with 2006, by 2015 in these localities there had been a general increase in the numbers of poor people “often unemployed people whose life situation essentially replicates the situation of the Roma population (debt, low education, etc.)”. By contrast, older persons are under-represented (7%, as opposed to 24% among the wider population), but their percentage is increasing.²⁰

In 2015, an enormous increase in the number of people living in hostels was identified, in comparison with 2006. Thus, as of 2008, “housing in other forms” (i.e. including hostels) had 7,115 adults and 3,912 children (11,027 people in total) living in them who received a housing supplement. As of December 2014, a total of 28,600 households in receipt of housing allowance, including 47,500 people, were already living in “other forms of housing”. Of these, 27,000 lived in hostels. Among the households in receipt of housing supplements in other forms of housing, a total of 7,300 were caring for a child under 18 - and 2,700 of these households were living in hostels.²¹ According to the 2018 Report on Housing Exclusion, 17,900

¹⁷ European Federation of National Organisations working with the Homeless (FEANTSA) v. France. Complaint No. 39/2006, Decision on the Merits of 5 December 2007.

¹⁸ International law strongly condemns racial segregation, set out *inter alia* in Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). In its most recent General Recommendation, Recommendation XIX on Article 3, the United Nations Committee on the Elimination of Racial Discrimination (CERD) made clear that: (i) the obligation to eradicate all practices of this nature includes the obligation to eradicate the consequences of such practices undertaken or tolerated by previous governments; (ii) while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons; and (iii) a condition of racial segregation can also arise without any initiative or direct involvement by the public authorities. The CERD Committee affirms that there is a positive obligation to end all such practices.

¹⁹ G.A.C. spol. SRO, “Analýza sociálně vyloučených lokalit v ČR”, May 2015, https://www.esfcr.cz/mapa-svl-2015/www/analýza_socialne_vyloucenych_lokalit_gac.pdf, pp. 12-13.

²⁰ Ibid.

²¹ Ibid.

households (25,300 people including 5,000 children) were living in hostels and 1,700 households (2,600 people including 700 children) in “other unsatisfactory forms of housing” (unapproved hostels) in 2018.²²

The proportion of unemployed people in socially excluded localities is on average about 80-85%. Unemployment is higher in “ethnically homogeneous localities” and in rural locations with a shortage of jobs. The highest average unemployment was reported by municipalities in the Moravskoslezský, Ústecký, Karlovarský and Olomoucký Regions. Most employment in these areas is “short-term or uncertain in duration” and generates very low earnings. The majority of adult inhabitants of these localities has “at most basic education” and “there is evidence that the level of their education has fallen over the past two decades”. Deepening residential segregation aggravates educational segregation: “[a]round 22% of current pupils in socially excluded localities – a total of between 3,000 and 3,500 pupils – are educated in strongly ethnically homogenous environments.”²³ Recent EU MIDIS II data comparing the situation of Roma between 2011 and 2016 indicated that the Czech Republic had not made progress in tackling segregation in education during the period (MIDIS II does not track housing or residential segregation). Between 2011 and 2016, the percentage of Roma people who had health insurance in the Czech Republic fell from 92% to 79%.²⁴

The concluding observations of the Committee on the Elimination of Racial Discrimination (CERD) from 2015 express concern at the segregation of Roma people. The Committee additionally expresses concern that some municipalities refuse to rent municipal housing to Roma people, which reinforces this segregation.²⁵

In its decision on Collective Complaint 58/2009, reviewing allegations of regressive measures brought by the complainant organisation, the Committee held that “an aggravated violation is constituted when the following criteria are met:

- i. on the one hand, measures violating human rights specifically targeting and affecting vulnerable groups are taken;
- ii. on the other, public authorities not only are passive and do not take appropriate action against the perpetrators of these violations, but they also contribute to such violence.”²⁶

FEANTSA considers that the markedly worsening situation of geographical and residential segregation in the Czech Republic, despite long-term international and European concern regarding this matter, merits the attention of the Committee. This is particularly the case in light of the issues described in section 5.3.1. below.

5.3.1. Designation of some territorial areas as ineligible for certain forms of housing supplements needed by the poorest and most vulnerable segments of society

²² *Platforma pro sociální bydlení a LUMOS*, “Zpráva o vyloučení z bydlení za rok 2018”, April 2019, <https://socialnibydeni.org/wp-content/uploads/2019/04/Zpr%C3%A1va-o-vylou%C4%8Den%C3%AD-bydlen%C3%AD-za-rok-2018.pdf>, p. 7

²³ Ibid.

²⁴ European Commission, “Commission Staff Working Document, Roma integration indicators scoreboard (2011-2016) Accompanying the document Communication to the European Parliament and the Council Midterm review of the EU framework for national Roma integration strategies”, SWD (2017) 286.

²⁵ CERD, 2015, Para. 11.

²⁶ Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, Decision on the Merits of 25 June 2010, paras. 76-77.

As of 1 June 2017, municipalities are entitled to declare certain parts of their municipality to be areas with an “increased incidence of socially undesirable phenomena” (officially “OOP”, but referred to informally as “non-benefit areas”).

Declaration of any area as “non-benefit” is possible only if the municipality proves that the respective area faces an increased incidence of socially undesirable phenomena, especially the disturbance of public order, negative impacts on children, the presence of substance users, etc. If this is the case, no new applicant moving to this area is entitled to receive housing benefit. Such limitations do not affect people already living in the non-benefit area under existing ownership, tenancy or other contractual agreements (i.e. “old” residents). This rule is intended to provide municipalities with a legal instrument against private owners of hostels and public lodgings who try to gather as many poor people as possible in their properties, charging them above-average fees and neglecting maintenance of the housing, leaving it unfit for habitation (the “poverty business”, as it has been called (see above)).

This law has been heavily criticized by several senators, who submitted a constitutional complaint to the Czech Constitutional Court, calling for the repeal of the new provisions. The senators mainly objected to the fact that the new provisions breach the general principle of equality and dignity, freedom of movement and freedom to conduct business. They also pointed out that, although the newly declared non-benefit areas were intended to apply only to applicants who moved into the area after the introduction of the rule, in fact many current residents live in their accommodation under short-term contracts. Thus, once their current contract terminates, the new contract might fall under the same restrictions as new residents, so even the “old residents” might lose their right to claim housing benefit, which is taking away existing rights. Declaring any location as a non-benefit area might also result in the creation of “ghetto” areas. To our knowledge, the Constitutional Court has not yet given its verdict on this Complaint.

The Czech Ombudsman joined the court proceedings and proposed the removal of this provision in law. Its main arguments were:

- i. The impossibility of making exceptions on a case-by-case basis;
- ii. The prior existence of different, softer measures;
- iii. The negative consequences – limitation of internal migration in the city, domino effect (if one municipality declares such areas, other cities around may declare them too to prevent people in material need moving to their city and so on), worse relations between cities, increased stigmatization of people in material need;
- iv. The provision is not proportionate (right of individuals in material need to help v. maintenance of public order) and is in violation of the Czech Charter of Fundamental Rights and Freedoms.

As of November 2018, over 80 municipalities have implemented or have announced an intention to implement these measures. According to online newspaper articles, several municipalities have already declared these territories, such as Kladno, Sokolov, Aš, Karviná, Duchcov and Trmice²⁷.

It is also possible that a municipality may try to declare its whole territory a non-benefit area, which would prevent other (“undesirable”) people from moving into such municipalities. This is happening in Kladno

²⁷ Ústí nad Labem se prohlásí za ghetto, jiná severočeská města mohou následovat:
<http://denikreferendum.cz/clanek/tisk/27709-usti-nad-labem-se-prohlasi-za-ghetto-jina-severoceska-mesta-mohou-nasledovat>

or Ústí nad Labem. It is also predictable that the non-benefit areas will all be declared in the regions with the highest concentration of localities with high levels of social exclusion. This may cause poor people to move away from cities to the countryside, where accommodation is more affordable, but where there are fewer opportunities to find a suitable job. Thus, their chances of integrating into society may decrease and their dependence on State support would likely increase.

FEANTSA believes the policy on the designation of geographical zones where residents are not eligible for emergency social assistance (described above) and the resulting practice of excluding certain categories of people from residing in those areas, results in indirect discrimination against certain groups of people, particularly the most vulnerable groups.

5.3.2 Social control measures that have a negative impact on the effective exercise of housing rights

The Czech Republic has local residence permit requirements and certain categories of persons, most notably homeless persons and persons in hostels, do not have access to them.

If a resident has a use title (e.g. ownership, rental contract) to the premises they live in, he/she may register their residence at the premises as their *Registered Permanent Residence (RPR)*. An RPR is the address of a Czech citizen in the Czech Republic. Each person may only have one RPR and RPRs are recorded in the Register of Residents. One usually registers one's RPR at the premises where one has family, an apartment or a job.

A person's RPR is used as the primary address to which the public authorities send any summons, letters or notices. If the citizen does not receive official documents that are delivered to their RPR, this can have serious consequences in certain procedures (e.g. in certain court cases). However, the following are also linked to the RPR:

- i. Rights (e.g. the right to vote in municipal and regional elections, the right to be elected to municipal and regional office, the right to park in the paid parking zones in Prague);
- ii. Services and duties (e.g. obligation to pay fees for waste collection to the municipality where one's RPR is registered, schools and pre-schools are selected based on the location of the RPR);
- iii. Procedural aspects in various public processes (e.g. tax, employment, court matters).

If a resident does not have a use title to any premises where he/she could register an RPR, he/she may register their RPR at the address of the municipal authority. When a citizen has their RPR at the address of the municipal authority, it must be indicated in the citizen's identification card. This may negatively affect these residents in civil law relationships (e.g. banks are reluctant to give bank loans to these persons, as these residents appear (in the view of the bank) less trustworthy and/or credit-worthy).

FEANTSA is of the opinion that the aforementioned control measures are not compatible with the relevant obligations of the 1961 Charter, in particular Article 16 of the Charter, as we will explain in the next section.

6. NON-COMPATIBILITY WITH THE EUROPEAN SOCIAL CHARTER

6.1. Article 16 of the European Social Charter

The right to housing is of central importance to the family and it permits the exercise of many other rights, both civil and political as well as economic, social and cultural.²⁸

The European Committee of Social Rights has consistently interpreted that Articles 16 and 31 partly overlap in several areas relating to the right of families to housing. In this respect, the notions of adequate housing and forced evictions are identical under both articles. The Committee has interpreted the right to economic, legal and social protection of the family provided for in Article 16 as guaranteeing the right to adequate housing for families.²⁹

Under Article 16, the Czech Republic must therefore promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and include essential services. Furthermore, the obligation to promote and provide housing extends to ensuring enjoyment of security of tenure, which is necessary to ensure the meaningful enjoyment of family life in a stable environment. This obligation extends to ensuring protection against unlawful eviction.³⁰ This means that, to ensure the satisfactory application of the right to family housing under Article 16 of the Charter, States parties should:

- i. Adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
- ii. Maintain meaningful statistics on needs, resources and results;
- iii. Undertake regular reviews of the impact of the strategies adopted;
- iv. Establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;
- v. Pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.³¹

The Czech legislation raises issues under Article 16 as it fails to provide an adequate supply of housing for families to access and maintain housing. The Committee has also stated that the obligation to promote and provide housing extends to security from unlawful eviction. In order to guarantee this, the Czech State should set up procedures to limit the risk of eviction.

The reality is that many poor families have no choice but to live in hostels, where there is inadequate protection and which affects their access to the essence of adequate housing, security of tenure, as they only sign temporary accommodation agreements that they have to renew periodically according to their income. This situation also raises serious concerns for residents from the point of view of habitability. Specifically, the Czech Republic lacks adequate legislation or policy on social housing and many poor

²⁸ CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant) and European Roma Rights Centre v. Greece, Collective Complaint No. 15/2003, §24

²⁹ Centre on Housing Rights and Evictions (COHRE) v. Croatia, Complaint No. 52/2010 § 54.

³⁰ European Roma Rights Centre (ERRC) v. Greece, (Complaint No. 15/2003) § 24; ERRC v. Bulgaria, (Complaint No. 31/ 2005) § 16 and 17

³¹ European Federation of National Organisations working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006

households, and especially Roma people, continue to be denied access to adequate housing, particularly social housing.³²

6.2. Non-discrimination guarantees in the Preamble to the European Social Charter

The Committee has emphasised³³ that one of the underlying purposes of the social rights protected by the Charter is to express solidarity and promote social inclusion. It follows that States must respect difference and ensure that social arrangements are not such as would effectively lead to or reinforce social exclusion. This requirement is exemplified in the proscription of discrimination in the Preamble and in its interaction with the substantive rights of the Charter. The situation described in the previous sections shows that there are certain groups whose enjoyment of the right to family housing of an adequate standard is particularly restricted or nullified on the grounds of their socioeconomic status or other personal circumstances. This is the case for many vulnerable households and the Romani minority.

Given the issues described in this Collective Complaint concerning Roma people and other poor and vulnerable people, this Complaint should be read in the light of the prohibition of discrimination as stipulated in Preamble to the Charter.

7. CONCLUSION

FEANTSA has identified five issues that are not compatible with the relevant provisions of the 1961 Charter:

- i. Ongoing threats to security of tenure and risk of eviction for poor households;
- ii. Disproportionate reductions in housing supplements provided, given the manifest continuing need;
- iii. Designation of some territorial areas as ineligible for certain forms of housing supplement;
- iv. Intensification of social and racial discrimination, including racial segregation;
- v. Social control measures that have a negative impact on the effective exercise of housing rights;

All these points raise issues under Article 16, read alone or in conjunction with the Preamble to the 1961 Charter. As well as the fact that these issues are not compatible with the relevant provisions of the Charter, the laws and policies of the Czech Republic regarding housing and housing supplements have a negative impact on other human rights.

On behalf of FEANTSA:



Ian Tilling (President of FEANTSA)

³² CERD, 2015, Para. 15 (b)

³³ European Roma Rights Centre v. Greece, Collective Complaint No. 15/2003, § 19.