



Mercy Law Resource Centre Second Right to Housing Report: The Right to Housing in Comparative Perspective

About Mercy Law Resource Centre (MLRC)

MLRC is an independent law centre, registered charity and company limited by guarantee. MLRC provides free legal advice and representation for people who are homeless or at risk of becoming homeless. We also seek to advocate change in laws, policies and attitudes which unduly and adversely impact people who are at the margins of our society. MLRC provides five key services: free legal advice clinics; legal representation in the areas of housing and social welfare law; legal support and training to organisations working in the field of homelessness; policy work; and a befriending service.

Second Right to Housing Report: The Right to Housing in Comparative Perspective (2018)

This report offers a comparative perspective on the right to housing through consideration of the legal systems of (i) Finland (ii) Scotland (iii) France and (iv) South Africa. There are a wide variety of structural and institutional means by which the right can be guaranteed – there is no one size that fits all model. The right to housing does not necessarily equate to a significantly increased constitutional role of the judiciary. A legally enforceable right to housing – while not a panacea – provides a valuable floor of protection. The jurisdictions highlighted in this report show that the effectiveness of the right to housing relies heavily on the existence of sufficient and enduring political will and the allocation of resources. A right to housing in the Constitution would not mean the right to a key to a home for all. A Constitutional right to housing would however put in place a basic floor of protection. It would require the State in its decisions and policies to protect the right to housing in balance with other rights.

Finland has a Constitutional Right to housing. Finland has adopted a form of constitutionalism where both the democratically elected legislature and an independent judiciary are entrusted with a shared duty to protect constitutional rights. This is a combination of *ex ante* review (before a draft law is passed) by a Constitutional Law Committee of Parliament and a limited form of *ex post* judicial review (after a law is passed) by the Courts.

Scotland has a broad legal protection for those who are homeless and at risk of homelessness and is regarded as one of the strongest in the world. Scotland's statutory right to housing makes local authorities responsible for the long term rehousing of homeless people and has an interim duty to provide temporary accommodation. Scotland also has a broad definition of those who are homeless. They also have an Order that limits the use of B&Bs as emergency accommodation to 7 days for families. There is currently no limit for the use of B&Bs in Ireland and we regularly meet families in our clinics who are in B&Bs for over 2 and half years before they are appropriately socially housed. Scotland also has a statutory effort to prevent homelessness: there is a duty on all registered social landlords, private landlords, and creditors, to notify the relevant local authority when proceedings are raised for the possession of a dwelling house so that the local authority may be able to respond on an individual basis to prevent homelessness occurring.

France has a statutory right to housing known as the DALO Act 2007 and this was a complete overhaul of the French system. The right to decent and independent housing is guaranteed by the State to all people who reside in France, exercised through mediation and if necessary through an adversarial process. Patterned after the Scottish model and includes both an entitlement to emergency shelter and a legal cause of action for individuals who have been denied the right to secure long-term housing



thereby helping to ensure security of tenure and accessibility. Protection is given to those who have a priority housing need – homeless, overcrowded, disability, threatened with eviction, guardian of minor child, dependent with disability, abnormally long waiting time for social housing. If the above qualification is met, the qualifying person may file a petition with a local housing mediation committee for urgent rehousing. This committee comprises of state representatives, local county and municipal representatives, representatives of social housing organization and individuals from tenant rights organizations and they refer to a local authority Prefect who then must find a suitable social housing for the applicant within a time period and if not rehoused within that time frame, the decision can be judicially reviewed and enforced.

South Africa has a constitutional right to housing which demonstrates that a justiciable right to housing offers a floor of legal protection, and does relatively little to alter the institutional balance of power over decisions concerning the allocation of public monies and resources.

Please note the following:

The right to housing is recognised in Europe in the Constitutions of Belgium, Finland, Greece, the Netherlands, Portugal, Spain and Sweden and in the legislation of Austria, France, Germany, Luxembourg, and the United Kingdom. Around the world, the right to housing is included in eighty-one Constitutions. The right to adequate housing is provided for in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the European Social Charter. As an economic and social right, in accordance with international human rights law, the State's obligation would be to 'progressively realise' the right to housing to the maximum of its available resources and to do this by all appropriate means, including particularly the adoption of legislative measures.

How would the Right to Housing help alleviate and protect against a crisis in homelessness?

- Legislation and policy would have to be "proofed" to ensure they reasonably protect the right to housing, in the same way as this must be done for any substantive right.
- If the State decided to cut funding for hostels for people who are homeless, this could be challenged as a breach of the right to housing.
- The failure of rent supplement and HAP payments to meet market rent could be challenged as a breach of the right to housing.
- The fact that there is no legal aid for evictions could be challenged as a breach of the right to housing.

A right to housing would require the State in its decisions and policies to protect the right to housing in balance with other rights and would mean that the courts could look at the State decision or policy as to whether it was 'proportionate' by reference to the right. It would mean that Government and State policies and actions would have to respect the right. As shown clearly in our three recent high court cases, there is no right to housing in Irish law nor is there a right to shelter. There is no clear legal right to rely on and the fundamental failure by the State to provide adequate emergency accommodation to a family with young children cannot be challenged directly in the Courts.

Many thanks for inviting me to speak to your Committee today. I welcome your questions.