

The justiciability of social rights, and in particular the right to housing, is one of the biggest obstacles to their protection.

1.- SPANISH CONSTITUTION

- At constitutional level, most ESC rights (with the exception of the right to education and union rights) are not recognized as human rights but as "guiding principles". This implies that they cannot be claimed before the courts, not even to denounce their violation, as is the case with other civil and political rights.
- In addition, the state housing law under parliamentary debate does not state the right to housing as a subjective right, that is, that it can be enacted before the public powers and courts.

Suggestion:

- *(to the legislative power) Modify Title I of the Spanish Constitution and eliminate the differentiation between rights (chapter 2 for "enforceable" fundamental rights and chapter 3 for "guiding principles", such as the right to housing, non-enforceable.*
- *(to the executive power) Include in the state housing law under debate that the right to housing is a subjective right.*

2.- COMPETENCES

Housing competences are ceded to the Autonomous Communities. However, when they legislate housing laws with this power, they are appealed before the Constitutional Court and, eventually, declared unconstitutional and annulled. This happened with different anti-eviction laws of multiple Autonomous Communities and with the rent control law of Catalonia (September 2020). The arguments range from an invasion of powers to the violation of the principle of equality between Spaniards, through the affectation of the economy and procedural regulations, all of which are state competence.

Suggestions:

- *(to the judiciary) Respect the popular sovereignty of the autonomous Parliaments and not adopt such a restrictive view of powers.*
- *(to the executive power) Regulate forcefully for the entire State in the state housing law.*

3.- INTERNATIONAL HUMAN RIGHTS LAW IMPLEMENTATION

As a consequence of the difficult enforceability of the right to housing in the domestic legal system, domestic remedies are often exhausted and it is necessary to use international forums. In this sense, the United Nations ESCR Committee has already issued 9 opinions concluding that Spain violated the right to housing, and dozens of precautionary measures paralyzing evictions for possible violations of rights.

The European Committee of Social Rights has recently resolved the first collective complaint under the Revised European Social Charter and its optional protocol, ratified by Spain this year (after years of insistence by civil society).

However, there is no procedural channel to implement the decisions of the treaty bodies, such as the United Nations committees or the European Committee of Social Rights. In this way, compliance with the precautionary measures depends on the will of the judge executing the eviction, and the implementation of the

recommendations contained in the opinions issued are difficult to follow. Moreover, the State Attorney's Office published a circular establishing the non-binding nature of this type of decision.

Suggestions:

- *(to the executive power) Eliminate the circular of the State Attorney that considers the decisions of the Treaty bodies non-binding*¹.

- *(to the executive and legislative power): amend the Treaties Law to include a procedural channel to implement IHRL decisions*².

¹ Ver la respuesta elaborada por la Plataforma DESC España al documento de la Abogacía Española titulado "La naturaleza jurídica de las resoluciones dictadas por los Comités encargados del seguimiento de los tratados de Derechos Humanos de las Naciones Unidas" de 22 de octubre de 2020. Aquí documento completo y aquí resumen ejecutivo (castellano) y aquí documento completo y aquí resumen ejecutivo (inglés).

² Ver aquí la propuesta de reforma elaborada por la Plataforma DESC España (no publicada pero sí compartida con el Gobierno y grupos parlamentarios del Congreso de los Diputados).