

The European Debt Crisis and Human Rights

JULY 2013

SUMMARIES of important decisions related to the European Debt Crisis. This digest highlights key policy statements from UN and Council of Europe officials, and decisions of national and regional courts concerning mortgages, housing and evictions; personal debt; and pensions and benefits. Prepared by lawyers at the Open Society Justice Initiative to bring these decisions to the widest possible audience.

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Policy Responses

United Nations

Chairperson of Committee of Economic, Social and Cultural Rights, Statement before UN General Assembly

On 23 October 2012, the chairperson of the UN Committee on Economic, Social, and Cultural Rights, Ariranga Govindasamy Pillay, stated that many austerity measures are potential violations of States under their obligations under the International Covenant on Economic, Social and Cultural Rights. In the Committee's Letter to State parties, it highlighted the plight of vulnerable groups like the poor, women, children, persons with disabilities, older persons, people with HIV/AIDS, indigenous peoples, ethnic minorities, migrants and refugees. The UN High Commissioner for Human Rights, Navi Pillay, has also expressed concern over the austerity measures' impact on human rights. In a press conference last October, she asked that austerity measures be accompanied with simultaneous measures to mitigate the effects of the crisis on the most vulnerable, particularly on health and education.

Link to [full statement](#)

UN Independent Expert on foreign debt and human rights, Statement at Conclusion of Mission to Greece

On 26 April 2013, the UN Independent Expert on foreign debt and human rights, Cephus Lumina, issued a statement declaring that the conditions of Greek's bailout plan undermine international human rights standards. The report found that more than ten percent of the population lives in extreme poverty and youth unemployment has reached fifty-nine percent, and address the impact of the crisis on the right to work, right to social security, right to housing, right to health, as well as addressing attacks on foreigners, privatization and poverty and inequality. His final observations and recommendations will be presented to the Human Rights Council in March 2014.

Link to [full statement](#)

Council of Europe

Resolution 1 on Legal Solutions to Debt Problems in a Credit Society

The Council of Europe's initial reaction to the debt crisis targeted ameliorating individual debt. In April 2005, the European Ministers of Justice adopted Resolution N°1 on Seeking Legal Solutions to Debt Problems in a Credit Society, and asked the Committee of Ministers to analyze the various legislative and administrative policies at national levels. A report that examined European over-indebtedness was submitted to the Council of Europe following the Resolution. It discussed the causes and existing policies around individual debt, and stressed the importance of general social security and public health programs, particularly their importance in providing protection from the effects of over-indebtedness.

The report recommended that the Council of Europe focus their prevention efforts on individual and family over-indebtedness, the alleviation of debt recovery as to avoid social exclusions, and the rehabilitation of over-indebted people with regard to their human dignity. The prevention component included: fairness of contract, adequate information for debtors at the time of contract formation, loyalty, maintenance of a balance between contract partners, and the right to debt cancellation in the event of default. The report also discussed specific recommendations for countries contemplating judicial consumer debt adjustment, such as ensuring debt adjustment accessibility to debtors acting in good faith and that repayment plans are reasonable with respect to payment obligations and length.

Link to [full resolution](#) (PDF)

Report of the Commissioner on Human Rights Following visit to Portugal

The Council of Europe's Commissioner of Human Rights, Nils Muiznieks, reported that Portugal's austerity measures disproportionately impacted the Roma, children, and the elderly. He stressed that Portugal should not be ignoring the vital rights of employment, housing, education, and social and medical assistance even in the time of a financial crisis. Prior to Portugal's harsh austerity regime, the [European Roma Rights Centre \(ERRC\) brought a case against Portugal](#) before the European Committee of Social Rights under the European Social Charter concerning substandard housing conditions for Roma in Portugal. The Committee held that there was a violation of the right to non-discrimination in conjunction with violations of the right to housing, the right to social, legal and economic protection, and the right to protection against poverty and social exclusion. The Commissioner noted with concern that this decision was far from being implemented, and called on Portuguese authorities to remedy their violations.

Link to [full report](#) (PDF)

Commissioner on Human Rights, Rethinking Access to Justice in Practice

The Council of Europe's Commissioner of Human Rights, Nils Muiznieks, prioritized the austerity measures on his agenda. European governments, notably Italy, Bulgaria and Spain, have taken measures decreasing their prison staff although their prisoner numbers have risen. Muiznieks specifically highlights the need to protect the rights of children, migrants and the disabled, due to the disproportionate impact of the austerity measures. He also addresses the right to legal aid, as there is a great deal of variability between states on this issue, with some states threatening to further reduce it along with other austerity cuts. Muiznieks's first human rights comment stressed the effective protection of human rights at a national level, particularly through national human rights institutions, as they are well equipped to protect the rights of vulnerable groups. The financial crisis's impact on human rights will likely be a priority for the Council of Europe going forward as well.

Link to [full statement](#)

Mortgages, Housing and Evictions

Hungary

Mate Szabo v. Hungary

Hungary Constitutional Court, Judgment of 12 November 2012

The Hungarian Constitutional Court revoked the Hungarian law that criminalized homelessness. The Act on Petty Offenses, which entered into force on 15 April 2012, criminalized the use of public spaces for habitations or storage, and repeat offenders faced either 75 days imprisonment or a fine of the equivalent of US \$ 655. Parliament decided to adopt the measure while the financial crisis caused an increasing number of families to live on the streets. The Constitutional Court held that the law was contrary to domestic rule of law and violated the human right to dignity. Homelessness does not infringe the rights of others and the financial penalty is usually not recovered, so the law serves as no real deterrent. However, despite this ruling, the Hungarian government currently continues to enforce the law.

Link to [full judgment](#) (Hungarian)

United Kingdom

Kay v. the United Kingdom

European Court of Human Rights, Judgment of 21 September 2010

The applicants lived in property owned by a Borough in London under leases provided by a “singles scheme” housing trust, a license agreement created between the trust and tenants under which the applicants were provided housing. In 1995, the borough replaced the license agreement with individual leases of each property granted to the trust, in order to allow the trust to replace its licenses to the applicants with shorthold tenancies, preventing the applicants from acquiring security of tenure. In 1999, the Borough gave the trust notice to terminate the leases, and it terminated the applicants’ leases the same year. Applicants’ summary proceedings in county court made no factual determination of the applicants’ personal circumstances and ordered them off the property. They were unable to appeal on proportionality grounds, so they appealed on grounds that the proceedings were unreasonable. The House of Lords found Article 8 defenses to eviction to be available in two situations, specifically when: (i) the law under which the defense claimed was incompatible with Article 8 or (ii) the tenant was not given a fair opportunity to invoke a defense under the law in question. Article 8 was not an independent defense on its own and thus, it held that applicants’ situation did not fit either of these standards.

The Court re-iterated its holding in [McCann v. U.K.](#), stating that the loss of one’s home is the most extreme form of interference with the right to respect for the home. Any person at risk of this kind of interference should be able to have the proportionality of the interference determined by an independent tribunal in light of Article 8, even if the person’s right to occupation has ended. The Court then concluded the House of Lords should have applied the second prong in a more flexible manner, allowing for personal circumstances to be relevant to the county court’s reasonableness assessment of the possession order. After finding that the applicants’ challenge to the decision failed because their summary proceedings did not account for their personal circumstances, the

Court held that the county court's decision inadequately assessed the proportionality of the county's decision. The county court should have assessed the applicants' personal circumstances when it evaluated the possession order's proportionality. Accordingly, there was a lack of sufficient procedural safeguards to be a violation of Article 8.

Link to [full judgment](#) (PDF)

Spain

Aziz v. Catalunya Caixa Bank

Court of Justice of the European Union, Judgment of 3 November 2010

Mohamed Aziz concluded a loan agreement with Catalunya Caixa Bank, and failed to make his monthly payments on his mortgage. The bank made use of an acceleration clause, a clause in the contract that enabled the bank to terminate its loan earlier than planned while still reclaiming the total amount on the loan. The bank also initiated foreclosure proceedings and evicted Aziz. He was not able to appear in these proceedings or prevent the public sale of his property. The property sold for half of the amount for which he paid, leaving him with a substantial amount of debt and no place to live. In the Spanish court that referred the case to the CJEU, the judge raised three preliminary questions to be addressed. The Court was asked to consider whether the Spanish mortgage system served as a limitation to consumer protection since it involved an "impediment to the consumer's exercise of his right of action or judicial remedies to guarantee the effective protection of his rights".

The Court of Justice of the European Union found that Aziz and other consumers were refused compensation for the bank's abuses that occurred prior to their court proceedings. This process was neither an adequate nor effective form of protection for the consumer, and failed to satisfy the EU Effectiveness Principle, which European domestic legislation is required to meet. Spanish courts hearing eviction disputes should be permitted to halt evictions until consumers have had their chance in court. This applies even more strongly in the context of a residential eviction, because the interests at stake are so much greater and the damage can be irreversible. The Court also found that while mortgage enforcement proceedings are matters reserved to national courts, the legislation must also meet the EU Equivalence Principle, i.e. the procedure for cases involving EU law should be the same as for other domestic proceedings. The interest rates for default mortgages in Spain at 18.75% are much higher than the standard 5% statutory rate, which led the Court to require that the Spanish government re-evaluate rates for fairness purposes.

Link to [full judgment](#) (PDF)

Personal Debt

Finland

Bäck v. Finland

European Court of Human Rights, Judgment of 20 July 2004

In 1990, the applicant and a co-guarantor agreed to guarantee a bank loan granted to another individual. The individual was unable to repay the loan, and the applicant and co-guarantor each paid the bank EUR 19,000. In 1995, the other individual applied for debt adjustment under the Finnish Debt Re-adjustment scheme and proposed a repayment schedule for the court's approval. After the individual found employment in 1996, the District Court granted the individual's application for adjustment and adopted a repayment schedule that accounted for the decrease in the individual's resources on account of his previous unemployment status, reducing the applicant's claim against him to EUR 360. The applicant appealed the decision on grounds that the near extinction of his claim violated his right to property under the Article 1 of Protocol 1 to the European Convention of Human Rights, but the Court of Appeal upheld the District Court's decision.

The Court held that the debt adjustment legislation served an urgent and compelling public interest in affording debtors the possibility to seek a debt adjustment in certain situations. It found that a compulsory transfer of property from one individual to another may constitute a legitimate means of promoting the public interest. The creditor's claims would be legally enforceable at a later stage did not change the fact that the creditor took a risk of financial loss. The Court acknowledged the possibility that a declaration of bankruptcy could result in an excessive and unfair burden on the creditor that could amount to a deprivation of property, but this would depend, among other things, on whether the creditor was provided a fair procedure of defending his interests. Here, proceedings gave the applicant a reasonable opportunity to defend his interests before competent authorities. Thus, the Court found no violation of Article 1 of Protocol 1.

Link to [full judgment](#) (PDF)

Ireland

Personal Insolvency Bill

The Irish government is in the process of reforming its debt laws, as they are based on outdated legislation. The Personal Insolvency Bill was approved in June 2012, and was drafted with the intent of providing more flexible options for indebted individuals. Irish courts have yet to hear any debt related cases, but there is an active Irish civil society advocating for a human rights approach towards those in debt. The bill is to include a "minimum income level", which will be the income a household will be entitled to retain for living expenses while making payments. Civil society advocates that the payment amount should reasonably support human dignity because the Council of Europe has addressed this as a critical human rights issue. They are also advocating for a scheme that does not allow significant degrees of discretion, arguing that discretion has led the District Court towards divergent decisions, sometimes based on perception and an assessment of personal characteristics, habits and irresponsibility.

Link to [FLAC Submission](#)

Pensions and Benefits

Hungary

E.B. (No. 2) v. Hungary

European Court of Human Rights, Judgment of 15 January 2013

In November 2010, the Hungarian government adopted a series of laws providing that all pension contributions paid by employees were to be paid into the State pension fund with the aim of reducing its deficit. A further amendment provided that the contributions to the private fund would be directed to the State fund. The applicant chose to remain a private pension fund member, meaning that she would be entitled to receive a full state pension for service after 1 November 2010, and 75% of the regular State pension for contributions prior to that date, with the remaining 25% being disbursed by the private pension fund. She complained that the new legislation amounted to a confiscation of her property, because the new pension fell short of a pension scheme that was directly related to her contributions and investment strategy.

The Court re-iterated its previous holding in *Maggio and others v. Italy*, that one's right to property does not guarantee any right to a particular amount of pension. It further held that despite the obligatory contributions to the state pension fund, the applicant remained free to make contributions to her private one. Her contributions to the private pension fund before the new legislation remained intact, and the contributions to the state fund pursuant to the new legislation transformed into an entitlement under the new scheme. The Court found that the applicant had not been deprived of her previous contributions, and she was entitled to future pension payments through all of the contributions that she had made. Accordingly, the Court ruled that there had been no interference with the applicant's rights to property under Article 1 of Protocol 1, and that the application was inadmissible pursuant to Article 35(4) of the Convention.

Link to [full decision](#) (PDF)

N.K.M. v. Hungary,

European Court of Human Rights, Judgment of 14 May 2013

The Hungarian Parliament adopted a Tax Act in 2010, in which it introduced a tax on certain payments to public sector employees whose employment had been terminated. The Act was intended to combat excessive severance payments at a time of economic hardship. After the Hungarian Constitutional Court declared it unconstitutional, the Parliament modified it, and the modified version entered into force on 14 May 2011. In May 2011, the Constitutional Court again found the amended Act unconstitutional, this time because of the bill's retroactivity provision, which allowed retroactive taxation on income from 2005 or later. It held that taxation on revenue before 2010 constituted a violation of human dignity. The applicant was a civil servant dismissed from her job on 27 May 2011. Under the Tax Act, the portion of her severance pay that exceeded EUR 12,000 was taxed at a 98% tax rate, while the rest was taxed at 52%. Both of these levels were higher than the 16% personal income tax rate that was in force at the time. The applicant complained that the 98% tax rate on her severance pay amounted to an unjustified deprivation of property and a violation of her rights under Article 1 of Protocol 1 to the Convention. She coupled this claim with an Article 14 discrimination claim because only a certain class of people had been subject to the tax.

The Court found that the taxation amounted to an interference with the applicant's right to peaceful enjoyment of her possession, as the severance pay constituted a possession for the purposes of Article 1 of Protocol 1. The Court also upheld the legality of the Tax Act, despite the fact that issues had been raised with respect to the legislation's constitutionality, and held protecting the public purse against excessive expenditure to be a legitimate aim. The Court then found that the Hungarian authorities enjoyed a wide margin of appreciation in taxation matters, allowing them to adjust severance pay to protect State assets in a time of economic instability. Nevertheless, the Court held the applicant's 52% rate to be too high. The Act should have accounted for the applicant's personal situation, who had suffered a substantial deprivation of income as result of being dismissed from employment. The Court found that the Act imposed an excessive and disproportionate burden on the applicant and other civil servants without an individualized assessment of their situation. Accordingly, although Hungarian authorities had a wide discretion in taxation matters, the Act was not reasonably proportionate to the legitimate aim it pursued, thus depriving the applicant of the right to enjoy her property under Article 1 of Protocol 1.

Link to [full judgment](#) (PDF)

Montenegro

A and B v. Montenegro

European Court of Human Rights, Judgment of 5 March 2013

Following the financial crisis in the former Socialist Federal Republic of Yugoslavia, Montenegro adopted legislation that allowed the conversion of foreign currency deposits in certain banks into a public debt. The legislation set the time frame and the amounts to be paid back to banks' former clients. After their mother's death, the applicants approached the Central Bank to have their mother's foreign-currency savings converted into Montenegro's public debt, and discovered that there were no foreign-currency savings registered in their mother's name. They were informed that there was no evidence that the debt had been paid, and that the debt they inherited from their mother had never been registered and transferred to the Central Bank. The applicants complained that they had been deprived of their right to enjoy property and suffered a violation under Article 1 of Protocol 1 to the Convention.

The Court held that foreign currency savings constitute a possession within the meaning of the Article 1 of Protocol 1, and found that the applicants and their mother had a legitimate expectation that they would re-obtain the savings. It re-iterated that a public authority's interference with one's enjoyment to possessions should pursue a legitimate aim in the public interest, and that contrary to the domestic legislation, the savings in question had never been registered and converted into the public debt. The Court found that that there had been an interference with the applicants' expectation to the savings, and that the legislation was unclear as to whether the bank or state authorities were responsible for the transfer. Consequently, there was a violation to the applicants' right to enjoy their property under Article 1 of Protocol 1.

[Link to full judgment](#) (PDF)

The United Kingdom

Caitlin Reilly and Jamieson Wilson v. the Secretary of State for Work and Pensions

U.K. Court of Appeal, Judgment of 12 February 2013

The U.K.'s Department of Work and Pension required a back-to-work scheme in which unemployed individuals seeking employment were required to work for free in order to receive a jobseekers allowance. The applicants, a university geology graduate and licensed heavy goods truck driver, enrolled in the scheme because they were told that it was mandatory and would assist them in finding a permanent job. Instead of the training they expected, the university graduate worked in retail and the truck driver was placed in a furniture delivery store. The applicants refused to do the work and challenged the legality of the scheme, arguing, among other things, that the scheme went beyond the powers of the Act governing it and that it constituted forced labor as prohibited by Article 4 of the European Convention of Human Rights. The lower court ruled that the applicants were allowed jobseekers pay, and that steps be taken to improve the new scheme.

The UK Court of Appeal found that the scheme went beyond the Act that authorized it. It also held the scheme to exceed the authority of the Secretary of State because it felt that only Parliament had the authority to authorize such a scheme. The applicants should have been given accurate information when they entered the scheme and be designed to assist claimants in obtaining employment or improve their prospects in doing so. In addressing the applicants' forced labor claims, the Court referred to an ECHR judgment in which the Court rejected the argument that a junior lawyer's requirement to assist in legal aid amounted to forced labor, and found that the burden on the applicants was not so great as to violate Article 4 (prohibition of slavery and forced labor). Accordingly, the Court held the scheme illegal because the Secretary of State did not have the authority to coerce jobseekers to work without adequate knowledge of the scheme, and that only Parliament had the authority to authorize the scheme as it was then practiced. The Department has sought to appeal the decision.

[Link to full judgment](#) (PDF)

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