

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Special Rapporteur on extreme poverty and human rights

Ref.: OL ITA 1/2025
(Please use this reference in your reply)

20 January 2025

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 52/10 and 53/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding **article 10 of the Draft Law 1236, regarding 'amendments to the criminal code and code of criminal procedure, to combat the arbitrary occupation of property used for housing'**. We were able to read the text as approved by the Chamber on 18 September 2024.¹ We understand that the text could be voted in the Senate in the first weeks of 2025.

This proposal in draft law 1236 supersedes the changes envisaged in draft law 566, on which we raised concerns in OL ITA 5/2023. On that occasion, we stressed that its approval could lead to violations of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and of the International Covenant on Civil and Political Rights (ICCPR), both ratified by Italy in 1978. We asked about the potential impact of the bill, particularly on vulnerable groups, about the measures foreseen to provide adequate alternative housing for people living in buildings or lands without a legal title, as well as to prevent evictions caused by the inability to cover housing costs.

While we note the reply received from Italy on 22 December 2023, we regret that several problematic aspects of the draft law No. 566 have been incorporated in article 10 of the new draft law 1236. While the reply received from Italy mentions that families facing economic hardships in the payment of rents could be supported by the National Rent Support Fund under law 431/98 and the Tenant in Delinquent Housing Fund under law No. 124 of 28 October 2013, it appears that this support is likely less available as the finance law cancelled funds allocated for this purpose in 2024 and as a result of reductions in the eligibility and scope of the basic social security grant called citizens income.

In our view, should the law be adopted, it could lead to the criminalization of certain persons in precarious situations who are unable to pay rent, and reduce procedural guarantees to protect the occupants of a dwelling from being pushed into homelessness.

Article 10 of the draft law 1236 makes the arbitrary occupation of properties a criminal offence that can be punished by a term of between 2 and 7 years when one of

¹ The full text is available at <https://www.senato.it/leg/19/BGT/Schede/Ddliter/58519.htm>

the following conditions are met:

- the offender is using violence or threatens to occupy or hold without title a property intended for housing;
- prevents the owner or the person legitimately holding it from re-entering the same property;
- appropriates another person's property or its appurtenances by means of artifice or deception;
- transfers and arbitrary occupied property to another person;
- interferes or cooperates in the arbitrary occupation of the property;
- receives or pays money or other benefits for the arbitrary occupation of the property.

Persons who cooperate in establishing the facts and voluntarily comply with the order to release the property shall not be punishable.

In addition, if the property is used as the only actual dwelling of the legitimate homeowner, articles 10.3-7 allows for an expediated process allowing the judicial police to order any irregular occupier to vacate the housing occupied and reinstate the homeowner. In case of refusal to vacate the property, the public prosecutor shall within 48 hours request the judge to validate the order of the judicial police which shall decide again after 48 hours on the matter. This strict timeline may leave insufficient time to consider all relevant facts and to search for housing alternatives to accommodate the occupier following his or her expulsion.

The Special Rapporteurs regret that several amendments proposed by parliamentarians that would have reduced the scope of the draft law to instances in which persons occupying a property without title are using violence and threats against the property owner have not been accepted. Generally, the Special Rapporteurs are of the view that any violence or threats against property owners should be prosecuted by relying on the existing Italian criminal law which ensures that any violence or threats against a person can be sanctioned irrespectively of the circumstances in which such conduct may occur.

Reiterating the concerns we already expressed about draft law 566, we regret that article 10 of the draft law 1236 fails to distinguish between different types of arbitrary occupation of housing, land or property, including between occupation caused by a state of necessity, and illegal occupation by criminal groups. Moreover, article 10 would not only apply to the limited category of housing occupations where a person is domiciled but temporarily absent, but also to situations where abandoned properties are occupied without a formal title. We are in particular concerned that persons who have no housing alternative may be criminalized under article 10 for the mere fact of remaining in a home without title and thus preventing the legitimate homeowner from re-entering, and be subjected to prison sentences if they do not vacate quickly their home. The law would therefore also criminalize:

- persons who occupy a property out of necessity without housing title (squatters);
- persons who fail to comply with an enforceable eviction order because they are unable to pay rent or to pay mortgage, or after the expiration of a lease;
- persons who are unable to demonstrate a valid contract, including tenants with a verbal contract, persons who occupy a dwelling based on unauthorized subletting or in exchange for services, persons housed without a contract or victims of a false lease;
- persons experiencing homelessness who resort to living in abandoned properties;
- persons residing in camps and informal settlements.

While article 10 has been presented as a way to guarantee the inviolability of the home and to secure the rights of homeowners, with a view to reducing the lengthy eviction procedures and to facilitating re-establishing the legitimate possession of property, its provisions may also lead to the criminalization of persons and households experiencing housing precarity, at a time when nearly one million households who are renting housing live in poverty, and about 150,000 requests for eviction and 170,000 housing foreclosures await execution. We are also fearful that persons may continue to stay irregularly in housing as they just have no housing alternative, and local governments will be unable to address this given that many thousand families entitled to public housing are currently on waiting lists.

The provision subjecting persons who interfere with the expulsion procedure or cooperate in the arbitrary occupation of a property to criminal punishment, could in addition be misused against legitimate activities of civil society organizations defending human rights, such as tenant unions or organizations supporting persons in precarity, who assist persons living in informality without a proper legal title. They often interfere in conflicts with homeowners on behalf of persons living in their properties without official legal title to achieve the regularization of their tenancy status, to prevent homelessness or to find a suitable housing alternative.

We wish to remind the Parliament and the Government of Italy of their obligations under ICESCR and ICCPR, both ratified by Italy in 1978, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Italy in 1989. To a large extent, laws criminalizing poverty or homelessness stem from a failure of States to guarantee the right to an adequate standard of living, enshrined in article 11 ICESCR, to everyone present on their territory. As we stressed in our recent joint study, subjecting activities associated with poverty or homelessness, such as squatting, to penalties, violates the right to an adequate standard of living when persons have no alternative to secure their survival by other means (A/HRC/56/61/Add.3). In the study, we reiterated the call to States to take all measures necessary to eliminate legislation that criminalizes homelessness. It would in our view be clearly disproportionate to subject a person or household who occupy a property because they are unable to access any alternative adequate housing, or who remain in housing after receiving an eviction order, to a criminal sanction involving incarceration. It would mean that a State that fails to guarantee the right to adequate housing set out in article 11 of ICESCR, would in addition impose a criminal sanction, resulting in a second human rights violation, namely the arbitrary deprivation of liberty of the concerned person. Indeed, imposing criminal sanctions that foresee prison terms of 2 to 7 years encroach on the human right to liberty and security of the person set out in article 9 of the ICCPR. While this right may be subject to lawful limitations, any detention even if based on national law must comply with the core elements of reasonableness, necessity, and proportionality (Human Rights Committee, general comment No. 35, para. 12.). Article 16 CAT further provides that States shall prevent acts of cruel, inhuman or degrading treatment or punishment.

We note that the Italian Criminal Code already regulates the encroachment on land or buildings under article 633, 633-bis and 634. These articles, while covering situations similar to those described in article 10, foresee less harsh sentences. These provisions seem sufficient to properly sanction crime-run occupations, while situations of a different nature should be resolved by other appropriate means without resorting to criminal law. Therefore, it appears that the draft article 10 would not only impact persons experiencing housing precarity, but also increase the existing sanctions in the Criminal Code for the encroachment on land and buildings. What must be avoided by all means is to subject persons who have no access to any adequate housing alternatives to harsh criminal sanctions, in particular in the case that the State or the competent local government has failed to uphold its obligations.

The failure to clearly distinguish between different instances of occupation without title appears difficult to reconcile with the position of the Committee on Economic, Social and Cultural Rights (CESCR), according to which States parties to the ICESCR “must give due priority to social groups living in disadvantaged conditions and pay special attention to them. Policies and legislation should not, in this context, be designed to benefit already advantaged social groups at the expense of other social strata” (CESCR, general comment No. 4, para. 11). While the realization of the right to housing must take into account the financial resources of State parties, the CESCR has noted that “any deliberately retrogressive measures [which would impact the realization of the rights of the Covenant] would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources” (CESCR, general comment No. 3, para. 9).

In its general comment No. 7, the CESCR has noted that if an eviction is to take place, procedural safeguards are essential, including genuine consultation, adequate and reasonable notice, adequate alternative housing made available within a reasonable time, and the provision of legal remedies and legal assistance. Under no circumstances should evictions result in individuals being rendered homeless, and the State party must take all appropriate measures to ensure that affected persons are provided with adequate alternative housing, resettlement, or access to productive land, as appropriate, if persons are unable to provide for themselves. Regardless of the type of tenure, even in the absence of any legal title, all persons should have some degree of security of tenure that provides legal protection against forced evictions, harassment, and other threats. Before proceeding with any evictions, States parties must ensure that all feasible alternatives are explored in consultation with affected persons in order to avoid, or at least minimize, the need to use force. States parties must also ensure that all affected persons are entitled to adequate compensation for any property, both personal and real, that has been affected.

We further wish to recall that, by acceding to the International Covenant on Economic, Social, and Cultural Rights, Italy has undertaken to that housing is affordable to all. In this regard, the CESCR has clarified that “steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs” (general comment No. 4 CESCR, para. 8(c)). The Special Rapporteur on the right to adequate housing detailed the obligation of States to ensure that everyone has access to not only adequate but also affordable housing (A/78/192). Thus, it would not be acceptable for forced evictions to be carried out if there is no legal guarantee that those affected have access to housing that meets basic adequacy standards and is affordable.

For these reasons, we recommend the Parliament and Government of Italy to reexamine the draft law 1236 and its article 10 in particular. This should involve an in-depth assessment of the potential impacts of such measure on vulnerable persons and households, clearly distinguishing occupations without a legal title by necessity from those driven by organized crime, as well as between the occupation of property used as someone else’s home and the occupation of abandoned or unused buildings. This would be essential to avoid any potential criminalization of persons in vulnerable or homeless situations and ensure that the proposed provisions are consistent with Italy’s international human rights obligations as set out above. Any amendment to the criminal law should not result in the deprivation of liberty of persons who may reside without a legal title in properties or on land, for the sole reason that they lack affordable access to any alternative housing or land. Evictions should never result in individuals being rendered homeless. Instead of introducing measures which may punish the poor or homeless for being poor and homeless and lacking the financial resources to access adequate housing, Italy should step up efforts to ensure that affected persons or families have access to housing which is affordable and provides legal security of tenure.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all situations brought to our attention, we would be grateful for any additional information and/or comment(s) you may have on the above

comments to the proposed law. We would also be grateful for information concerning:

1. on the potential impact that the proposed law might have on persons in vulnerable situations, such as persons experiencing homelessness or extreme poverty, migrants, or minorities such as Roma communities;
2. the measures that have been taken or are envisaged to ensure access to adequate alternative housing, in particular for persons living in properties or on land without a formal legal title;
3. the measures that have been taken or are envisaged to prevent evictions caused by the inability to cover housing costs for persons and households experiencing economic hardships, and to provide them with housing support;
4. the measures foreseen to guarantee access to adequate and affordable housing to everyone present on Italy's territory, including on those aimed to provide rental support.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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