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Mandates of the Special Rapporteur on extreme poverty and human rights and of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living

21 June 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 43/14 and 44/13.

We wish to address a request for information concerning any laws and regulations that may still be in place in several European countries at national, federal state or local level which may result in criminalization of persons living in extreme poverty or homelessness. This request for information is addressed to all Member States of the Council of Europe and to European and National City Networks and Associations. We would also kindly request national Governments to share this letter as well with regional Governments in their respective countries (including e.g. federated entities, départements, cantons, (autonomous) regions, etc.), who may have concurrent or exclusive jurisdiction on the matters referred to in this letter.

This request for information follows from the ruling of the European Court of Human Rights (ECHR) in the case of Lăcătuș v. Switzerland (application no. 14065/15), which recognised that the order to pay a fine for begging in public in Geneva, and detention in remand for five days for failure to pay the fine, was a violation of Article 8 (right to respect for private and family life, home and correspondence) of the European Convention on Human Rights.

The judgment acknowledged that, in some cases, begging could constitute the only means of survival for poor people who do not have access to a job and are not in receipt of social benefits. Therefore, being in a clearly vulnerable situation, the person cannot be sanctioned disproportionately for meeting her basic needs by begging.

The Court considered that the penalty imposed on the applicant had not been proportionate either to the aim of combating organised crime or to the aim of protecting the rights of passers-by, residents and shopkeepers. In the Court's view, the penalty imposed had infringed the applicant's human dignity and impaired the very essence of the rights protected by Article 8 of the European Convention on Human Rights. The Court stated that an outright ban on begging in blanket fashion is a radical measure, which requires strong justification and particularly rigorous judicial scrutiny.

Permanent Missions of the Council of Europe's member States, as listed in Annex 1

The judgment of the European Court of Human Rights confirms that begging and other life-sustaining activities in public should not be criminalised or punished by fines or prison sentences. Such sanctions regrettably continue to exist or have even been introduced by States, regional or local Governments in Europe¹ and other countries affecting persons experiencing homelessness or living in extreme poverty.

International human rights standards and ruling of other regional human rights mechanisms and bodies support this judgement of the European Court on Human Rights. The UN Guiding Principles on Extreme Poverty and Human Rights (A/HRC/21/39), adopted by Human Rights Council resolution 21/11 in September 2012, underline that States should “repeal and reform any laws that criminalize life-sustaining activities in public places, such as sleeping, begging, eating or performing personal hygiene activities”. Furthermore States should “review sanctions procedures that require the payment of disproportionate fines by persons living in poverty, especially those related to begging, use of public space and welfare fraud, and consider abolishing prison sentences for non-payment of fines for those unable to pay” (para. 66).

The Guidelines for the Implementation of the Right to Adequate Housing (A/HRC/43/43), specify in Guideline No. 5 that “States should prohibit and address discrimination on the ground of homelessness or other housing status and repeal all laws and measures that criminalize or penalize homeless people or behaviour associated with being homeless, such as sleeping or eating in public spaces. The forced eviction of homeless persons from public spaces and the destruction of their personal belongings must be prohibited. Homeless persons should be equally protected from interference with privacy and the home, wherever they are living.” They further recommend: “States should provide, within their justice system, alternative procedures for dealing with minor offences of homeless people to help them break the cycle of criminalization, incarceration and homelessness and secure the right to housing.”

In June 2020, the Human Rights Council called in resolution 43/14 on States to “take all measures necessary to eliminate legislation that criminalized homelessness, and to take positive measures with a view to prevent and eliminate homeless by adoption and implementing laws, administrative orders, cross-sectional strategies and programmes at all levels that are, among others, gender-, age- and disability-responsive and based on international human rights law.”

Within the European Union, the European Parliament has called repeatedly on all EU Member States to decriminalise homelessness and change discriminatory practices used to prevent homeless persons from accessing social services and shelter.²

¹ See, Jones, Samara (ed.), Mean Streets. A report on the criminalization of Homelessness in Europe, Abbé Pierre Foundation, Feantsa, Housing Rights Watch, Brussels 2013; available at:

<https://www.housingrightswatch.org/sites/default/files/Mean%20Streets%20-%20Full.pdf>

FEANTSA, Criminalising homeless people – banning begging in the EU, February 2015; available at:

https://www.feantsa.org/download/2015-02-07_draft_criminalisation_policy_statement-38703600034690521366.pdf;

Feantsa, The Criminalisation of Homelessness, Homelessness in Europe, Spring 2020, available at:

https://www.feantsa.org/public/user/Resources/magazine/2020/Homeless_in_Europe_Magazine_Spring2020_Criminalisation_of_homelessness.pdf.

² European Parliament resolution of 16 January 2014 on an EU homelessness strategy (2013/2994(RSP)); European Parliament resolution of 24 November 2020 on tackling homelessness rates in the EU (2020/2802(RSP)); European Parliament resolution of 21 January 2021 on access to decent and affordable housing for all (2019/2187(INI)).

In the light of the ECHR judgment and the above mentioned human rights standards we call on national, regional and local Governments within their respective competencies to:

- a) refrain from enforcing any laws and regulations criminalizing persons in situation of poverty or homelessness which are incompatible with international human rights standards and the ECHR judgement with immediate effect, and
- b) repeal or revise laws and regulations criminalizing begging, sleeping, eating and performing hygienic activities by replacing them with alternative regulations compatible with human rights standards.

In this context, we would be interested to learn more about relevant laws and regulations applicable in your respective jurisdiction. We would therefore be grateful for your observations on the following matters:

- 1) Does your city, province/canton, federal state or national State have any laws or regulations in place that prohibit begging, eating, sleeping, or performing personal hygienic activities in all or certain public places? Could you kindly share as well the text of relevant legal norms?
- 2) Could you kindly provide your views as to whether or not regulations relating to begging applicable in your jurisdiction are compatible with the above mentioned UN human rights standards and the judgment of the European Court of Human Rights in the case of *Lăcătuș v. Switzerland*?
- 3) Has your local, regional or national Government adopted any measures to decriminalise begging, eating, sleeping or performing personal hygienic activities in public places? Is your Government planning to undertake such measures in light of the judgement of the European Court on Human Rights? If so, could you kindly explain what is envisaged, and which obstacles you may be facing?
- 4) Which measures are in place in your municipality, province/canton/federal State to support people living in poverty from having to resort to begging, sleeping, washing, defecating or performing other hygienic activities in public places because they do not have access to employment, social assistance, adequate housing, public showers and toilets?

The UN resolutions establishing our mandates request Governments to cooperate with us and provide us with all necessary information to fulfil our functions, and we are grateful to the local and regional authorities for contributing to this duty to cooperate.

We would be grateful to receive your answers to our questions and any additional information you may want to share with us by 31 July 2021. Please send your replies to registry@ohchr.org (cc: srhousing@ohchr.org) using the heading “Reply to the Special Rapporteurs on extreme poverty and adequate housing”.

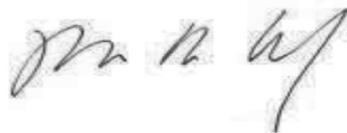
Replies received by States, regional and local governments will be published on the websites of the Special Rapporteurs, except where confidentiality is explicitly requested. We would welcome if replies by regional governments could be consolidated in the response of the national government. Replies of local governments, local government associations and city networks can be sent directly to us.

We thank you very much for your efforts in our common goal to strengthen the human rights protection of persons experiencing homelessness and extreme poverty.

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

A handwritten signature in black ink, appearing to read 'B. Rajagopal', with a stylized flourish at the end.

Balakrishnan Rajagopal
Special Rapporteur on adequate housing as a component of the right to an adequate
standard of living

A handwritten signature in black ink, appearing to read 'O. De Schutter', with a stylized flourish at the end.

Olivier De Schutter
Special Rapporteur on extreme poverty and human rights

Annex 1

- Permanent Mission of the Republic of Albania to the United Nations Office and other international organizations in Geneva
- Permanent Mission of the Principality of Andorra to the United Nations Office and other international organizations in Geneva
- Permanent Mission of the Republic of Armenia to the United Nations Office and other international organizations in Geneva
- Permanent Mission of Austria to the United Nations Office and specialized institutions in Geneva
- Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other international organizations in Geneva
- Permanent Mission of Belgium to the United Nations Office and specialized institutions in Geneva
- Permanent Mission of Bosnia and Herzegovina to the United Nations Office and other international organizations in Geneva
- Permanent Mission of the Republic of Bulgaria to the United Nations Office and other international organizations in Geneva
- Permanent Mission of the Republic of Croatia to the United Nations Office and other international organizations in Geneva
- Permanent Mission of the Republic of Cyprus to the United Nations Office at Geneva and other international organizations in Switzerland
- Permanent Mission of the Czech Republic to the United Nations Office and other international organizations in Geneva
- Permanent Mission of Denmark to the United Nations Office and other international organizations in Geneva
- Permanent Mission of the Republic of Estonia to the United Nations Office and other international organizations in Geneva
- Permanent Mission of Finland to the United Nations Office and other international organizations in Geneva
- Permanent Mission of France to the United Nations Office at Geneva and other international organizations in Switzerland
- Permanent Mission of Georgia to the United Nations Office and other international organizations in Geneva
- Permanent Mission of the Federal Republic of Germany to the United Nations Office and other international organizations in Geneva
- Permanent Mission of Greece to the United Nations Office at Geneva and other international organizations in Switzerland
- Permanent Mission of Hungary to the United Nations Office and other international organizations in Geneva
- Permanent Mission of Iceland to the United Nations Office and other international organizations in Geneva
- Permanent Mission of Ireland to the United Nations Office and other international organizations in Geneva
- Permanent Mission of Italy to the United Nations Office and other international organizations in Geneva

- Permanent Mission of the Republic of Latvia to the United Nations Office and other international organizations in Geneva
- Permanent Mission of the Principality of Liechtenstein to the United Nations Office and other international organizations in Geneva
- Permanent Mission of the Republic of Lithuania to the United Nations Office and other international organizations in Geneva
- Permanent Mission of the Grand Duchy of Luxembourg to the United Nations Office and other international organizations in Geneva
- Permanent Mission of Malta to the United Nations Office and other international organizations in Geneva
- Permanent Mission of the Principality of Monaco to the United Nations Office and other international organizations in Geneva
- Permanent Mission of Montenegro to the United Nations Office and other international organizations in Geneva
- Permanent Mission of the Kingdom of the Netherlands to the United Nations Office and other international organizations in Geneva
- Permanent Mission of the Republic of North Macedonia to the United Nations Office and other international organizations in Geneva
- Permanent Mission of Norway to the United Nations Office and other international organizations in Geneva
- Permanent Mission of the Republic of Poland to the United Nations Office and other international organizations in Geneva
- Permanent Mission of Portugal to the United Nations Office and other international organizations in Geneva
- Permanent Mission of the Republic of Moldova to the United Nations Office and other international organizations in Geneva
- Permanent Mission of Romania to the United Nations Office and other international organizations in Geneva
- Permanent Mission of the Russian Federation to the United Nations Office and other international organizations in Geneva
- Permanent Mission of the Republic of San Marino to the United Nations Office at Geneva and other international organizations in Switzerland
- Permanent Mission of the Republic of Serbia to the United Nations Office and other international organizations in Geneva
- Permanent Mission of the Slovak Republic to the United Nations Office and other international organizations in Geneva
- Permanent Mission of the Republic of Slovenia to the United Nations Office and other international organizations in Geneva
- Permanent Mission of Spain to the United Nations Office and other international organizations in Geneva
- Permanent Mission of Sweden to the United Nations Office and other international organizations in Geneva
- Permanent Mission of Switzerland to the United Nations Office and other international organizations in Geneva
- Permanent Mission of Turkey to the United Nations Office at Geneva and other international organizations in Switzerland

- Permanent Mission of Ukraine to the United Nations Office and other international organizations in Geneva
- Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations Office and other international organizations in Geneva