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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

22 June 2021

Dear Madame, Sir,

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.

European and National City Networks and Associations, 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.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'B. Rajagopal', with a long horizontal stroke extending to the right.

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 'Olivier De Schutter', with a long horizontal stroke extending to the right.

Olivier De Schutter
Special Rapporteur on extreme poverty and human rights

Annex 1

- Mr. Karl Bjornsson, Association of Local Authorities in Iceland
- Mr. Refik Bojadžić, Union of Municipalities of Montenegro
- Mr. Abel Caballero Alvarez, Federación Española de Municipios y Provincias
- Mr. Antonio Decaro, Associazione Nazionale Comuni Italiani
- Mr. Mario Fava, Local Councils' Association
- Mr. Kurt Fluri, Union des villes suisses
- Ms. Corinne François, Union of Belgian Cities and Municipalities
- Mr. Zygmunt Frankiewicz, Association of Polish Cities
- Mr. Viorel Furdui, Congress of Local Authorities of Moldova
- Mr. Jonathan Gainche, Villes de France
- Mr. Leonard Geluk, Association of Netherlands Municipalities
- Ms. Silvia Georgieva, National Association of Municipalities in the Republic of Bulgaria
- Mr. Christos Hadjiyiangu, Union of Cyprus Municipalities
- Mr. Lasse Hansen, Norwegian Association of Local and Regional Authorities
- Mr. Agron Haxhimali, Albanian Association of Municipalities
- Ms. Erja Horttanainen, Association of Finnish Municipalities
- Mr. Staffan Isling, Swedish Association of Local Authorities and Regions (SKR)
- Mr. Dimitris Kafantaris, Central Union of Municipalities of Greece (KEDE)
- Mr. Gerard Koob, Syndicat des villes et communes luxembourgeoises (SYVICOL)
- Ms. Anna Labátová, Association of Towns and Communities of Slovakia
- Mr. Olivier Landel, France Urbaine: Metros, Agglos et Grande Villes
- Mr. Gerd Landsberg, German Association of Towns and Municipalities
- Ms. Sally Loudon, Convention of Scottish Local Authorities (COSLA)
- Mr. Mark Lloyd, Local Government Association
- Mr. Tim Lucey, Local Government Management Agency
- Mr. Veikko Luhala, Association of Estonian Cities and Municipalities
- Mr. Derek McCallan, Northern Ireland Local Government Association (NILGA)
- Mr. Henry Meijdam, Association of Provinces of the Netherlands
- Mr. David Melua, National Association of Local Authorities of Georgia
- Mr. Constantin Mitache, Romanian Municipalities Association
- Mr. Dario Nardella, Eurocities
- Ms. Dusica Perisic, Association of the Units of Local Self-government of the Republic of north Macedonia
- Ms. Mudīte Priede, Latvian Association of Local and Regional Governments
- Ms. Fatma Şahin, Union of Municipalities Turkey
- Mr. Miloš Senčur, Association of Urban Municipalities of Slovenia
- Mr. Ullrich Sierau, Association of German Cities
- Mr. Oleksandr Slobozhan, Association of Ukrainian Cities
- Mr. Husejin Smajlović, Association of Municipalities and Cities of the FBiH
- Mr. Rui Solheiro, National Association of Portuguese Municipalities (ANMP)
- Mr. Đorđe Staničić, Standing Conference of Towns and Municipalities
- Mr. Steve Thomas, Welsh Local Government Association (WLGA)
- Mr. Željko Turk, Association of Cities

- Mr. Frédéric Vallier, Council of European Municipalities and Regions (CEMR)
- Ms. Alexandra Vitalievna Ignatieva, Union of Russian Cities
- Ms. Radka Vladyková, Union of Towns and Municipalities of the Czech Republic
- Mr. Kristian Wendelboe, Local Government Denmark (LGDK)
- Mr. Thomas Weninger, Austrian Association of Cities and Towns
- Mr. Emin Yeritsyan, Union of Communities in Armenia
- Ms. Roma Žakaitienė, Association of Local Authorities in Lithuania
- Mr. Gábor Zongor, Hungarian National Association of Local Authorities (TÖOSZ)