

THE RIGHT TO HOUSING IN ITALY:

In Italy there is no provision in the constitutional dictum that enshrines the right to housing as a social right expressly recognized. Constitutional jurisprudence began to outline the contours of this right in the early 1980s, but always placed it in a position serving for the affirmation of other rights related to it.

The first ruling of the Constitutional Court in which we find a reminder of the right to housing is Judgement 252/1983 which states that *“undoubtedly the home constitutes, for its fundamental importance in the life of the individual, a primary good that must be adequately and concretely protected by law”*.

Subsequently, with judgments 49/1987, 217/1988 and 404/1988, the *inviolable nature of the right to housing* and the existence of a *general duty on the part of the community to prevent people from being homeless* was affirmed. Despite the fact that the constitutional jurisprudence has tried to outline as much as possible the contours of this right, anchoring it to articles 2, 3 and 47 of the Constitution and thus including it in the sphere of the inviolable rights of the person, there is still no clear definition of the minimum essential content of that right, making it impossible for it to be directly claimed in court.

The right to housing is therefore not an absolute and directly protectable subjective right, but relevant if necessary for the affirmation of other rights such as the right to health (free access to medical care subject to the subsistence of residence) or the right to equal protection of the relationship of cohabitation outside marriage compared to that within marriage as enshrined in the 404/1988.

However, landlords are not obliged to sign a rental lease with people in need of housing; it is possible for the less well-off to apply for and obtain state funding for the purchase of the first home. We can therefore deduce that in the Italian constitutional structure, the right to housing is considered achievable in proportion to the resources of the communities, granting the legislature and the political body the freedom to decide whether and in what terms to implement it.

In the Italian system, this leads to an uneven implementation at the national and regional levels. Among the most interesting legislation is the Housing Plan approved in 2009 (16 July 2009) and the creation of a National Rent Support Fund. The Plan aims to revive social housing through the rethinking of the forms of planning and management of building interventions assisted by new lenders (banks, foundations and individuals) both centrally and locally through coordination between Regions, local authorities and the Ministry of Infrastructure with the task of identifying specific intervention programs defined through a prior selection of requests that are indicative of the different housing problems.

Regarding evictions, some recent judgments have tried to strike a balance between landlords and tenants. The Constitutional Court reiterated the need for the community to support/ share the economic and social burden related to the protection of disadvantaged tenants, also with the aim of alleviating the reduction of the rights of landlords (see for instance Constitutional Court ruling 155/2004).

An interesting case of Supreme Court (cass. 3558/2007) clarified that the 'right to housing' must be among the 'primary goods linked to the person'. It deserves to be among the fundamental rights of the person (protected by Article 2 of the Constitution); therefore the supreme judges consider that the *abusive occupation of a house, by a person in need and in a state of need, can be considered 'justified' and not lead to criminal conviction*. This was

decided by the Supreme Court, by postponing the conviction against a woman for illegal occupation of a house by the Court and the Rome Court of Appeal.

At European level, Italy ratified the Revised European Social Charter on 5 July 1999, accepting 97 of its 98 paragraphs, including the Article 31 on the right to housing. It accepted the Additional Protocol providing for a system of collective complaints on 3 November 1997 but has not yet made a declaration enabling national NGOs to submit collective complaints. Italy is also a State party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and ratified its Optional Protocol in February 2015.

A decision of the Centre on Housing Rights & Evictions (COHRE) v Italy¹ constitutes a key step in the evolution of the collective complaints' jurisprudence of the European Committee of Social Rights. In addition to being a substantial addition to that body's existing jurisprudence on housing rights and Roma rights, it contains a number of new elements with major implications for human rights protection under the European Social Charter 1961 and the Revised European Social Charter 1996 (Revised Charter). *The notions of adequate housing and forced eviction are identical under Articles 16 and 31*².

Another relevant decision for the defence of the right to housing in Italy was the European Roma Rights Centre (ERRC) v. Italy, Collective Complaint No. 27/2004.³ The Committee concluded that there was a violation of Article E taken in conjunction with Article 31§1 on the grounds that Roma camping sites were insufficient and inadequate. The Committee concluded that there was a violation of Article E taken in conjunction with Article 31§2 on the grounds that eviction procedures of Roma were not adequate, and Roma were victims of unjustified violence during such evictions.

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¹ Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, Decision on the merits of 25 June 2010, § 115

² Digest of the case law of the European Committee of Social Rights, 2018.

³ European Roma Rights Centre (ERRC) v. Italy, Collective Complaint No. 27/2004, Decision on the merits of 7 December 2005