

Mandate 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

REFERENCE:
AL CRO 3/2019

12 December 2019

Excellency,

I have the honour to address you in my capacity 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, pursuant to Human Rights Council resolution 34/9.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **persons living in homelessness in Croatia**.

According to the information received:

There is no national strategy for collecting data on homelessness in Croatia. Official data indicates that there were 364 persons living in the country's 14 overnight shelters in December 2018, but a study of the European Commission estimates the population of persons "sleeping rough" to be closer to 2,000, a figure that could increase to around 10,000 persons depending on the methodology.¹

Rates of homelessness in Croatia have been growing in the decade from 2009 to 2019. Practitioners and service providers report that, in the context of the recent economic crisis, the profile of persons falling into homelessness in Croatia has changed, with homelessness now affecting a broader range of people. Beyond those with drug dependence, or with psycho-social or other disabilities, people living in homelessness increasingly include able-bodied persons of working age, older persons, and families with children. Tenants of private apartments whose rights date back to the old regime (around 3.7 million persons) are particularly vulnerable to evictions and social exclusion, which risks leading those families into homelessness.²

Persons living in homelessness who do not have an identity document or an official address are excluded from social assistance and from the right to healthcare.

¹ European Social Policy Network (ESPN) (2019) "Fighting Homelessness and Housing Exclusion In Europe" <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8243&furtherPubs=yes>, p. 49

² European Social Policy Network (ESPN) (2019) "National strategies to fight homelessness and housing exclusion: Croatia", p. 5-7, <https://ec.europa.eu/social/BlobServlet?docId=21595&langId=en>, p. 6

Article 11 of the 1990 Minor Offences against Public Order and Peace Act criminalizes poverty and homelessness by establishing a penalty of 50 to 200 German marks and imprisonment of up to 30 days for “wandering and begging” (“skitnji ili prosjačenju). According to media reports, homeless persons in Zagreb avoid public places and go in hiding in order to avoid being charged for vagrancy by the police.³

Croatia’s 2013 Social Care Act made cities and county capitals responsible to ensure funds for shelters and other services for persons in homelessness, such as soup kitchens, employment, training, etc. However, as of 2019, 10 of the 21 counties in Croatia still lack such services.⁴

While I do not wish to prejudice the accuracy of the information made available to me, I wish to express my serious concern about these allegations of multiple violations of human rights, contrary to international human rights law. The number of persons living in homelessness is an indication that the right to adequate housing is not being effectively implemented. In light of the direct relationship between homelessness and otherwise preventable disease and illness and premature mortality, this would indicate that the Government’s obligations with respect to the right to health and the right to life are not being met. The removal of persons living in homelessness from public spaces by force, without providing sufficient short and long-term accommodation, and subjecting them to fines or imprisonment, would also constitute violations of the prohibition of cruel, inhuman or degrading treatment. The disproportionate impact of the above-mentioned violations on vulnerable groups would also indicate violations of the rights to equality and non-discrimination.

I call on the Government to develop a strategy for the collection of disaggregated data on the current number of persons in homelessness and to take immediate life-saving action to address their situation of emergency. The imminent arrival of winter exacerbates the risks faced by thousands of persons in homelessness. Furthermore, according to international human rights bodies, States have an obligation to immediately implement measures to eliminate homelessness within broader rights-based housing strategies.⁵ Rights-based housing strategies must contain clear goals and timelines as well as set out the responsibilities of all levels of government and of other actors for the implementation of specific, time-bound measures, and must be supported by the necessary resources required for implementation. This process should involve consultation with, and participation by, persons living in homelessness.⁶ Croatia’s failure to adopt and implement a homelessness strategy falls short of meeting this obligation.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

³ <https://balkaninsight.com/2018/08/28/novel-tour-reveals-secret-life-of-croatia-s-homeless-08-24-2018/>

⁴ Ibid, p.8

⁵ Please see my report on rights-based housing strategies: A/HRC/37/53

⁶ Please see my report on homelessness and related State obligations: A/HRC/31/54

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain what measures are in place to ensure access to adequate shelter and housing for persons who are currently homeless, including in the 10 counties which do not provide services to persons living in homelessness, contrary to the 2013 Social Care Act.
3. By what date and through what measures do you anticipate eliminating homelessness as required by international human rights law and SDG Goal 11, Target 11.1?
4. Please indicate what measures you have in place to prevent the causes of homelessness, including the situation of tenants of private apartments whose rights date back to the old regime.
5. Please provide information on measures taken to collect reliable data on homelessness and kindly share most recent official estimates disaggregated by gender, age, nationality, ethnicity or other social indicators.
6. Please provide more information as to whether persons without identity documents or an official address may be excluded from accessing social or housing benefits, social housing, medical care or medical insurance, or other human rights. What measures have been put in place to address these issues?
9. Please provide more information on any laws or regulations that would penalize persons in homelessness for their presence in public spaces. Please clarify under which circumstances such laws or regulations impose fines or detention on persons who stay in a public space and whether such regulations also authorize the confiscation or destruction of personal belongings, including sleeping bags, tents or other materials used for shelter.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the

investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

I intend to publicly express my concern for homelessness as a global human rights crisis in the near future as, in my view, the information available to me is sufficiently reliable to indicate a matter warranting immediate attention. Should I issue a press release, it will mention several countries as an example of the global homelessness crisis, and indicate that I have been in contact with the respective Governments to clarify the issues in question.

Homelessness is a human rights crisis of a global scale; I am also sending similar letters calling the attention of other Governments to the situation of homeless persons in their respective countries.

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

Leilani Farha

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

Annex

Reference to international human rights law

In connection with the above, and without prejudice to the accuracy of these allegations, I would like to draw the attention of your Excellency's Government to the relevant international norms and standards.

I wish to draw the attention of your Excellency's Government to its obligations under article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), succeeded to by Croatia on 12 October 1992, which states that "[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right [...]." Pursuant to article 2.2 of the ICESCR, it is the obligation of States Parties to guarantee that the Covenant's rights will be exercised "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status [emphasis added]." Finally, the Committee on Economic, Social and Cultural Rights has stressed in General Comment No. 4 that the right to adequate housing includes affordability, accessibility, and legal security of tenure.

The Committee on Economic, Social and Cultural Rights has previously recognized that a State party to the ICESCR in which a significant number of individuals are deprived of basic shelter and housing is, prima facie, failing to discharge its obligations under the Covenant. States parties are required to demonstrate that every effort has been made to use a maximum of available resources in an effort to discharge their obligations. Furthermore, I wish to direct your Excellency's Government to my report on homelessness and the right to adequate housing (A/HRC/31/54), in which I note that homelessness constitutes a serious violation of the right to adequate housing to which must respond to homelessness with the highest level of urgency. National and sub-national governments must immediately repeal any laws or measures that criminalize, impose fines on or restrict persons living in homelessness or behaviour associated with being homeless, such as sleeping or eating in public spaces. Governments also have an obligation to combat and prohibit any law or practice that serves to discriminate, stigmatize and negatively stereotype persons living in homelessness.

I also draw your attention to article 6 of the International Covenant on Civil and Political Rights, succeeded to by Croatia on 12 October 1992, which protects the right to life, which is understood as "the supreme right from which no derogation is permitted" and, "the effective protection of which is the prerequisite for the enjoyment of all other human rights and the content of which can be informed by other human rights."⁷ The Human Rights Committee specifically states that "The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying

⁷ Human Rights Committee, General Comment No. 36 para. 2.

their right to life with dignity. These general conditions may include ... homelessness.” The Committee also states that the measures called for to address adequate conditions for protecting the right to life include, where necessary, “measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health care ...” [emphasis added].⁸ Violations of the right to life must be treated with the utmost seriousness and urgency. There is little doubt that homelessness triggers right to life interests.

I also call your attention to article 27.1 of the Convention on the Rights of the Child, succeeded to by Croatia on 12 October 1992, which states that “States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.” Further, article 27.3 states that “States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing, and housing.” Adequate housing has an adverse impact on the physical health, well-being and development of children. As such, any increase in the number of children living in homelessness is incompatible with the Convention.

I also recall General Comments No. 4, 7 and 20 of the Committee on Economic, Social and Cultural Rights, which stress the need to provide adequate legal protection from forced eviction, as well as to guarantee due process, alternative accommodation, and access to an effective remedy for those that may be affected by eviction orders. Demolitions and destruction of property are strictly forbidden under international human rights law and standards. According to these General Comments, Croatia must have explored all feasible alternatives to forced eviction in consultation with the affected persons. Moreover, demolitions must never lead to homelessness of evicted persons by ensuring there is provision of adequate alternative housing facilities, resettlement and compensation for lost property.

Furthermore, I wish to direct your Excellency’s Government to my report on homelessness and the right to adequate housing (A/HRC/31/54), in which I note that homelessness constitutes a gross violation of the right to adequate housing. States must therefore respond to homelessness with the highest level of urgency. The Committee on Economic, Social and Cultural Rights has previously recognized that a State party to the ICESCR in which a significant number of individuals are deprived of basic shelter and housing is, prima facie, failing to satisfy its obligations under the Covenant. Instead, States parties are required to demonstrate that every effort has been made to use all available resources in an effort to meet their obligations.

I note that through Agenda 2030 for Sustainable Development, the Government of Croatia has committed itself to eliminating homelessness. Target 11.1 requires all States to ensure access for everyone to adequate, safe, and affordable housing by 2030. This necessarily means eliminating homelessness by 2030. To this end, states must adopt

⁸ Human Rights Committee, General Comment No. 36 para 26.

rights-based housing strategies with the aim of eliminating homelessness by that date. I refer you to my report on human rights-based housing strategies (A/HRC/37/53) in which I identify ten key principles for the strategies' effective development and implementation. According to these principles, States must ensure the political participation of persons living in homelessness in the design, implementation, and monitoring of rights-based housing strategies. Strategies should also work to combat stigmatization and discrimination against persons living in homelessness.

The full texts of the human rights instruments and standards recalled above are available at www.ohchr.org or can be provided upon request.