

ITALY - HOUSING RIGHTS

Normative background

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 the 252/1983, where the house is recognized as the primary asset of the individual. 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 will be affirmed. Despite the fact that the constitutional jurisprudence, in its judgments, has tried to outline as much as possible the contours of this right, anchoring it to art. 2, 3 and 47 cost. 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, there is no requirement for the owner to contract with those who have a housing need, it is possible to obtain a right for the less well-off to apply for state funding for the purchase of the first home. It is therefore deduced that in our constitutional structure, the right to housing is considered achievable in proportion to the resources of the communities, leaving the legislature and the political body the freedom to decide whether and in what terms to implement it.

In our system, this leads to an uneven implementation between the national and regional levels. Among the most interesting legislation is the Housing Plan approved in 2009 (d.p.c.m. 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 more identifying of the different housing problems.

With regard to evictions, some recent judgments have tried to find an equilibrium between owners and tenants. The Constitutional Court reiterated the need for the community to shoulder the burden, economic and social, relating to the protection of tenants belonging to disadvantaged groups, also with the aim of alleviating the compression of the rights of landlords (see Sent for example. Constitutional Court 155/2004).

In the current emerging context, Article 103 paragraph 6 of **DL COVID** No. 18 of 17.03.20 suspended all evictions, including those for non-residential use, until 30 June 2020. Quote:

"6. The implementation of the property release measures, even for non-residential use, is suspended until 30 June 2020."

Regional and Local good practices

At the regional and local level we point out three administrative interventions of particular importance:

With regional law 11 December 1998 n 55, the **Lazio region** has provided for a mechanism for the identification of unused properties or in an obvious state of degradation owned by public bodies or private entities. The identification, which considers with the highest priority the properties located in the historic centers, is the responsibility of the Region, the provinces, municipalities, autonomous institutions for social housing and public institutions of assistance and charity. The properties identified are assigned, through regular tender, to self-recovery and/or self-construction cooperatives that carry out the renovation for use in the context of public housing.

The second intervention is a memorandum of understanding promoted by the prefecture of Bologna, **Emilia-Romagna region**, Bologna province, Municipalities, Bologna Bar Association, trade unions and protection associations for landlords and tenants and credit institutions and banking foundations. The protocol, implemented on 30 October 2012, is aimed at implementing extraordinary preventive measures for evictions through the possibility of access to a contribution to the balance of the rent in arrears in order to avoid the validation of eviction or, if there is an eviction validation not yet carried out, for the payment of 2/3 of the deposit of a new accommodation.

The third is the extraordinary system applied in the **Lombardia** region of housing support for rent integration for separated or divorced parents, particularly with younger children. Legally separated or divorced spouses who, as a result of a court order, lose the availability of the family home, assigned to the other spouse, may participate in the tenders for the allocation of public housing. Regional Regulation 7/2015 gives legally separated or divorced parents a score equal to that awarded to 'applicants' who are subjected to eviction procedures.

An interesting case of Supreme Court (cass. 3558/2007)

State of need justifies home employment.

This was established by the Supreme Court, clarifying the 'right to housing' to be counted among the 'primary goods linked to personality'.

ROME - The 'right to housing' should be counted among the 'primary goods linked to personality'. they deserve to be counted 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 for illegal occupation of an IACP house inflicted on a woman by the court and the Court of Appeal in Rome.