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**CONTRIBUTION OF HUMAN RIGHTS AND EQUALITY INSTITUTION OF TÜRKİYE (HREIT)**

**TO THE CALL FOR INPUT ON “DECRIMINALIZATION OF HOMELESSNESS AND EXTREME POVERTY”**

6 October 2023

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**to the Call for Input on**

**“Decriminalization of Homelessness and Extreme Poverty”**

Homelessness is a situation that leads to major human rights violations, especially the right to life, and occurs in all countries and regions all around the world. Definition of homelessness is changing according to the source of use. Governments, civil society, international agencies and other institutions are accepting different types of definition on homelessness.[[1]](#footnote-1) They are adopting these definitions depending on language, socioeconomic conditions, cultural norms, the groups affected and the purpose for which homelessness is being defined.[[2]](#footnote-2) According to the United Nations, homelessness means **“*not having stable, safe and adequate housing, nor the means and ability of obtaining it.”****[[3]](#footnote-3)*

The right to adequate housing is one of the most important human rights because it is closely relevant to the right to live in safety and dignity which is a key element in international human rights law.[[4]](#footnote-4) In countries and regions where homelessness exists, it is seen that governments are insufficient in the fulfillment of the right to adequate housing. Governments fail to fulfill their responsibilities in the protection and promotion of human rights.[[5]](#footnote-5)

*“Globalized neoliberalism has had a shocking impact on production of space, urbanization, housing systems, housing policy and especially on the right to housing. Although housing has the primary social function to provide a home for people, it has been increasingly described as ‘a means for wealth and investment rather than a social property’ with globalization. This tendency, which can be named as ‘financialization of housing’, has isolated the house from its main function and turned it into a commodity for an investment and profit.* ***Accompanying the destruction of the social state, the evolution of the approach to the right to housing from a rights based perspective to an understanding based on finance and profit maximization causes socio-economic deprivations****. As a matter of fact, this trend towards financialization has negative effects especially on low- and middle-income households. Today, there are major humanitarian crises in access to adequate housing throughout the world. As a matter of fact, this humanitarian crisis, which has worsened with the pandemic, has brought the necessity of questioning the right to housing on the basis of social rights.”[[6]](#footnote-6)*

Homeless people face many human rights violations. The most important of these violations is the violation of the right to life. In addition to the right to life, homeless people face violations of the right to an adequate standard of living, the right to education, the right to liberty and security of the person, the right to privacy, the right to social security, the right to freedom from discrimination, the right to vote, and more.[[7]](#footnote-7) These rights are protected under the important international human rights treaties such as **“International Covenant on Civil and Political Rights (ICCPR)”**, the “**International Covenant on Economic, Social and Cultural Rights (ICESCR)”**, and the **“Convention on the Rights of the Child (CRC)”.[[8]](#footnote-8)** Another important legal document in the fight against homelessness is the **Guidelines for the Implementation of the Right to Adequate Housing** **(A/HRC/21/39).[[9]](#footnote-9)** According to the Guidelines, housing is a fundamental human right and should be treated as such by states and international legal actors. With the implementation of the Guidelines, it is expected that states' attitudes towards the need for housing will change and States will be more decisive in the area of combating homelessness.[[10]](#footnote-10)

Extreme poverty leads to many human rights violations including lack access to education, health services, safe drinking water and basic sanitation.[[11]](#footnote-11) Due to the fact that poor people are obliged to work in hazardous jobs which causes human rights violations, poverty could be both a cause and a consequence of human rights violations.[[12]](#footnote-12). On the other hand, if States do not fulfill their duties in combating poverty, poor people can’t get rid of the environment that leads to poverty.[[13]](#footnote-13)

The eradication of poverty and the promotion of human rights are interrelated goals that are enshrined in many international treaties and commitments.[[14]](#footnote-14) **The Guiding Principles on Extreme Poverty and Human Rights (A/HRC/43/43)** were the first international political principles to pay particular attention to the human rights of people living in poverty.[[15]](#footnote-15) According to the Guiding Principles combating extreme poverty is **a legal obligation** under the international human rights law and States must take measures to eradicate poverty and raise human rights standards for their residents.[[16]](#footnote-16) The Guiding Principles attempted to guarantee that public policies of States reached the most vulnerable individuals in society, respected and upheld their rights, and took into account the enormous social, cultural, economic, and structural barriers that people living in poverty confront in exercising their human rights.[[17]](#footnote-17)

Two different regulations have been introduced in Turkish Law to combat begging actions in the legal field. The first one is the **offense of begging**, and the second one is the **crime of begging**. The distinguishing factor between the offense of begging and the crime of begging is that the offense of begging involves individual begging, whereas in the crime of begging, the use of a child or a person with disabilities as a means of begging is involved.

Individual begging is prohibited nationally by the **Article 33 of the Misdemeanor Law - No: 5326**. Article 33 of the Misdemeanor Law regulates the act of begging (individual/direct begging) as a misdemeanor. ***“(1) An administrative fine of fifty Turkish Liras is imposed on the person who begs. In addition, it is decided to transfer the property to the public by confiscating the income from begging. (2) For this misdemeanor, administrative fines and confiscation are decided by law enforcement or municipal police officers, and the property is transferred to the public by the local authority or municipal committee.”***

Making someone else beg is a crime and is regulated in **Turkish Penal Code- No: 5237 Article 229**[[18]](#footnote-18). This substance has a similar purpose to human trafficking**. *“(1) Any person who uses a child or person with physical or mental impairments as a means for begging shall be sentenced to a penalty of imprisonment for a term of one to three years. (2) The penalty to be imposed shall be increased by one half, where the offence is committed by blood relatives or in-laws including third degree or a spouse. (3) The penalty to be imposed shall be increased by one fold where the offence is committed within the framework of the activities of a criminal organization”***

In the provision of Article 229 of the Turkish Penal Code, a qualified state that aggravates two types of punishment is envisaged in terms of begging crime. These are the commission of the crime by blood or in-law relatives, including the third degree, or by the spouse, and within the framework of organizational activity.

Apart from these two provisions in the Misdemeanors Law and the Turkish Penal Code, another law that includes provisions on begging is the Social Services Law No. 2828. The provision of article 3/b-4 of this Law considers the child who is neglected by his/her mother or father and dragged into linguist as a “*child in need of protection”* and the Decree Law No. 633 on the Organization and Duties of the Ministry of Family and Social Policies. Within the scope of the 2/1,g (art. 8/1,ç) provision, the Ministry of Family and Social Policies is mandated with taking measures to protect these children. As a matter of fact, with the 32nd article of the United Nations Convention on the Rights of the Child, to which Türkiye is a party, the states party to the Convention are obliged to accept *“the right of the child to be protected from economic exploitation and to be protected from working in a way that may be harmful to his moral or social development”.* The obligation to establish penalties or other appropriate sanctions for the effective implementation of rights has been introduced (art. 32/1, 2-c) by the Article 60 of the Penal Code Clause 229 is a consequence of this contractual obligation.

There are no articles prohibiting eating or performing hygienic activities in all or certain public places in the Misdemeanor Law - No: 5326 and the Turkish Penal Code- No: 5237.

In Turkish Law begging is sanctioned via administrative law. Administrative sanctions to be applied to misdemeanors consist of administrative fines and administrative measures. An administrative sanction is not ordered by the court as a result of the criminal procedure. This penalty is given by an administrative person or board. These fines are not recorded in the criminal record, and if they are not paid, they will not be converted into prison.

Individual begging, eating, sleeping or performing personal hygienic activities in public places are not criminalized in the Turkish Penal Code. Therefore, there are no attempts made or planned to decriminalize these activities.

Criminal Justice System of Türkiye has not conclude penalization, punishment or detention procedures against persons living in poverty or experiencing homelessness. On the contrary, relevant ministries and authorities are carrying out studies and preparing projects to solve these problems that faced by homeless and persons living in poverty.

Ministry of Family and Social Services of the Republic of Türkiye carries out the **“Homeless Accommodation Project”**. With the Homeless Accommodation Project, 81 Provincial Directorates meet the accommodation needs of the homeless and persons living in poverty. The teams of the Ministry continue their work and make every effort to reach homeless people by urgently evaluating the notifications received from citizens. Within the scope of the Project, homeless and persons living in poverty were identified in the provinces and assistance was provided to these persons within the scope of the right to adequate housing. Cleaning, health, basic food, clothing and other needs of the homeless people were also met within the scope of the Project. Efforts are continuing under the coordination of the Ministry to meet the needs of homeless and people in need of help.[[19]](#footnote-19)

National human rights institutions (NHRIs) are independent bodies with significant powers to protect and promote human rights and uncover violations of rights and freedoms. The founding law of the Human Rights and Equality Institution of Türkiye (HREIT), **the Law No. 6701 on the HREIT**[[20]](#footnote-20), mandated the institution in three main areas. According to this, HREIT has national human rights institution mandate, which covers protecting and promoting human rights; equality body mandate which contains fighting against discrimination, and lastly, national preventive mechanism mandate.

In the area of the protecting and promoting human rights, HREIT has the authority to inquire into, examine and take a final decision on and monitor the violations of non-discrimination principle – ex officio or upon an application. Regarding the protection and promotion of human rights, HREIT has the authority to; ex officio inquire into, examine, take a final decision on and monitor the results of violations of human rights.

HREIT also has authority to increase public awareness through information and education by using mass media, contribute to the preparation of the relevant sections in the national education curriculum, work jointly with universities, contribute to the establishment and implementation of the principles of human rights and equality education programs of public institutions and organizations, monitor and evaluate the legislative work related to its field of duty and inform the relevant authorities of its opinions and suggestions, publish special reports on the task field when necessary, monitor and evaluate international developments in the field, cooperate with international organizations, prepare annual reports to be submitted to the Presidency and the Bureau of the Turkish Grand National Assembly.

Within the scope of its national human rights institution and equality body mandate HREIT has studies in the fields of combating homelessness and poverty. According to its public awareness raising activities, HREIT published an **“Evaluation Report on Post-Earthquake Rent Increases Within the Context of Right to Housing**” on 31 March 2023.[[21]](#footnote-21) In the report, HREIT emphasized that:

**“*As one of the most important requirements of the social state, one of the critical tools of providing individuals with a minimum standard of living worthy of human dignity is the right to housing.”***

***“Indeed, the right to live in a safe and decent dwelling is central to the enjoyment of both social and political rights as a necessary component of a dignified life.”***

***“The right to housing, as a fundamental human right, is one of the minimum conditions for living a life worthy of human dignity. One of the components of the right to live in a suitable and adequate dwelling is the affordable housing.”***

***“High rent increases, which would constitute a violation of the right to housing, will have shocking effects not only on those directly affected by the earthquake but also on the whole society in terms of conscience and morality. On such days, a collective responsibility arises for all segments of society. Therefore, everyone should endeavor to protect and fulfill the exercise of their rights by respecting the right of earthquake victims to adequate and favorable housing without discrimination.”***

***References***

* Muharrem Kılıç, Sociopolitics of the Right to Housing: An Analysis in terms of Social Rights Systematics, Anayasa Yargısı, Volume: 37, Issue: 2, 2020. <https://dergipark.org.tr/tr/download/article-file/1478285>
* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/154/60/PDF/G1215460.pdf?OpenElement>
* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/353/90/PDF/G1935390.pdf?OpenElement>
* <https://humanrights.gov.au/our-work/publications/homelessness-human-rights-issue-2008>
* <https://www.aile.gov.tr/istanbul/haberler/bakan-selcuk-evsizlerin-konaklatilmasi-projemiz-ile-81-il-mudurlugumuz-kimsesizlerin-konaklama-ihtiyaclarini-gideriyor/>
* <https://www.ohchr.org/en/documents/thematic-reports/ahrc4343-guidelines-implementation-right-adequate-housing-report-special>
* <https://www.ohchr.org/en/special-procedures/sr-housing>
* <https://www.ohchr.org/en/special-procedures/sr-housing/homelessness-and-human-rights>
* <https://www.ohchr.org/en/special-procedures/sr-poverty>
* <https://www.ohchr.org/en/special-procedures/sr-poverty/about-extreme-poverty-and-human-rights>
* <https://www.ohchr.org/en/special-procedures/sr-poverty/guiding-principles-extreme-poverty-and-human-rights>
* <https://www.ohchr.org/en/special-procedures/sr-poverty/international-standards>
* <https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/HomelessSummary_en.pdf>
* <https://www.tihek.gov.tr/kategori/pages/pdf/k49u7p.pdf>
* <https://www.tihek.gov.tr/public/editor/uploads/1660833133.pdf>
* <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)011-e>

1. <https://www.ohchr.org/en/special-procedures/sr-housing/homelessness-and-human-rights>

   (Access Date: 02.10.2023) [↑](#footnote-ref-1)
2. <https://www.ohchr.org/en/special-procedures/sr-housing/homelessness-and-human-rights>

   (Access Date: 02.10.2023) [↑](#footnote-ref-2)
3. <https://www.ohchr.org/en/special-procedures/sr-housing/homelessness-and-human-rights>

   (Access Date: 02.10.2023) [↑](#footnote-ref-3)
4. <https://www.ohchr.org/en/special-procedures/sr-housing> (Access Date: 03.10.2023) [↑](#footnote-ref-4)
5. <https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/HomelessSummary_en.pdf>

   (Access Date: 02.10.2023) [↑](#footnote-ref-5)
6. Muharrem Kılıç, Sociopolitics of the Right to Housing: An Analysis in terms of Social Rights Systematics, Anayasa Yargısı, Volume: 37, Issue: 2, 2020, p. 67-112. <https://dergipark.org.tr/tr/download/article-file/1478285>

   (Access Date: 06.10.2023) [↑](#footnote-ref-6)
7. <https://humanrights.gov.au/our-work/publications/homelessness-human-rights-issue-2008>

   (Access Date: 02.10.2023) [↑](#footnote-ref-7)
8. <https://humanrights.gov.au/our-work/publications/homelessness-human-rights-issue-2008>

   (Access Date: 02.10.2023) [↑](#footnote-ref-8)
9. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/353/90/PDF/G1935390.pdf?OpenElement>

   (Access Date: 03.10.2023) [↑](#footnote-ref-9)
10. <https://www.ohchr.org/en/documents/thematic-reports/ahrc4343-guidelines-implementation-right-adequate-housing-report-special> (Access Date: 03.10.2023) [↑](#footnote-ref-10)
11. <https://www.ohchr.org/en/special-procedures/sr-poverty/about-extreme-poverty-and-human-rights>

    (Access Date: 02.10.2023) [↑](#footnote-ref-11)
12. <https://www.ohchr.org/en/special-procedures/sr-poverty/about-extreme-poverty-and-human-rights>

    (Access Date: 02.10.2023) [↑](#footnote-ref-12)
13. <https://www.ohchr.org/en/special-procedures/sr-poverty/about-extreme-poverty-and-human-rights>

    (Access Date: 02.10.2023) [↑](#footnote-ref-13)
14. <https://www.ohchr.org/en/special-procedures/sr-poverty/international-standards> (Access Date: 03.10.2023) [↑](#footnote-ref-14)
15. <https://www.ohchr.org/en/special-procedures/sr-poverty> (Access Date: 03.10.2023) [↑](#footnote-ref-15)
16. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/154/60/PDF/G1215460.pdf?OpenElement>

    (Access Date: 03.10.2023) [↑](#footnote-ref-16)
17. <https://www.ohchr.org/en/special-procedures/sr-poverty/guiding-principles-extreme-poverty-and-human-rights> (Access Date: 03.10.2023) [↑](#footnote-ref-17)
18. <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)011-e>

    (Access Date: 03.10.2023) [↑](#footnote-ref-18)
19. <https://www.aile.gov.tr/istanbul/haberler/bakan-selcuk-evsizlerin-konaklatilmasi-projemiz-ile-81-il-mudurlugumuz-kimsesizlerin-konaklama-ihtiyaclarini-gideriyor/> (Access Date: 04.10.2023) [↑](#footnote-ref-19)
20. <https://www.tihek.gov.tr/public/editor/uploads/1660833133.pdf> (Access Date: 04.10.2023) [↑](#footnote-ref-20)
21. <https://www.tihek.gov.tr/kategori/pages/pdf/k49u7p.pdf> (Access Date: 04.10.2023) [↑](#footnote-ref-21)