

# Protecting housing possession in the Italian legal framework

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# Possession in the legal context

- Lack of consideration of housing interest in possession regulation
  - 3rd Book, Title VIII, of Italian civil code
- Importance of certain goods in the satisfaction of essential human needs
- ‘Property for Personhood’
  - «*some property worthier of protection than other property*» (Radin 1982)

# Possession in the legal context

- A paradigmatic example: the home as a complex of interests
  - Financial investment
  - Physical place
  - Source of social security
  - Means for personality development
- Constitutional recognition of housing interest
  - Law-making address for housing access enhancement
  - Horizontal effect in private relationship (Breccia 1980)

# Why possession? Why not ownership?

- Ownership → all-embracing power over the good
  - Right to dispose takes advantage of the good's *commercial value*
- Possession focuses on *use value's* exploitation interest
- The direct enjoyment of the good is an essential aspect of housing interest

# Why possession? Why not ownership?

- Factual dimension of home in art. 8 of ECHR case-law
  - «whether or not a particular habitation constitutes a “home” [...] will depend on [...] the existence of **sufficient and continuous links**» (Buckley v. UK; Gillow v. UK; Mabeey v. UK)
- «not limited necessarily to those homes which have been lawfully occupied or lawfully established»
- *De facto* possession as the natural field of housing situation

# Research lines

- How can the notion of home influence the inner structure of *possession*? When can different *de facto* holding activity over the house be qualified as possession?
- According to the national and international law sources (EU and ECHR), to what extent the right to housing as a human right can reinforce protection of private possessory relationships?

# Possession in the Italian legal framework

## Scope of the analysis

- Immovable goods regulation
- Attention for housing end-use buildings
- Regulation of interim situation of possession
  - Overlooking of *usucapio*
- Acquisition, conservation and loss of possession



# Possession in Italian legal framework

## Critical issues

1. Will theory vs objective theory
  - Intention vs activity in ascertainment of possession
2. Distinction between possession and detention
  - Different degrees of protection (artt. 1168 e 1170 Italian c.c.)
3. Relevance of owner's behaviour
  - Interferences toleration
  - Abandonment

# Housing possession cases

Preliminary analysis of the multi-level notion of the right to housing, as applied by the national and international case-law

Living situation cases:

- *Cohabitation outside marriage*
- *Default tenant in (or at risk of) eviction*
- *Squatter*

# Expected results

## Which remedies?

- Possessory actions
  - Extension of the legal standing
  - Degree of protection
- Compensatory remedy
  - Non-pecuniary damages
  - Coordination with possessory actions

# Thanks for your attention!

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