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DROIT DU BAIL

Occupation illicite d'un immeuble et simplification des interventions contre ces occupations illicites : le prochain combat ?



Auteur: Sandra Gerber | Le : 4 November 2024

Unlawful occupation of a building and simplifying action against unlawful occupation: the next battle?

In the run-up to the vote on 24 November 2024, the newspapers are already announcing 'The next battle on the housing front'[\[1\]](#). But what is this next battle?

The two issues concerning tenancy law put to the vote on 24 November have already been the subject of previous articles by the undersigned, who does not intend to return to them here. This article therefore focuses solely on the 'next battle' announced by the press, which the Centre patronal describes as the 'Fight against squatting'[\[2\]](#), and provides some information on the subject.

As far as the background is concerned, in June 2015 National Councillor Olivier Feller already tabled a motion (15.3531) in the National Council asking the Federal Council to take the necessary measures to ensure that owners of illegally occupied buildings can exercise their right of repossession provided for in the Civil Code under less restrictive conditions. The National Council and then the Council of States accepted this motion in 2017. At its meeting on 2 September 2020, the Federal Council put proposals along these lines out to consultation and drew up an explanatory report[\[3\]](#).

At its meeting on 15 December 2023, the Federal Council adopted a draft law. According to the media release, the aim of the bill is 'to strengthen the rights of property owners faced with an occupation, and in particular their right to defend themselves: the law will now specify the time limit for property owners to repossess their property and evict usurpers using proportionate force. The new injunction instrument will also make it easier for the judge to order the eviction of a group of unknown occupants'[\[4\]](#). The bill provides for the amendment of article 926 paragraphs 2 and 3 of the Civil Code, the amendment of article 248 letter c of the Code of Civil Procedure and

the adoption of new articles 260a and 260b, also in the Code of Civil Procedure^[5].

The Federal Council's plan is designed to simplify action against unlawful occupiers of property, and in fact covers three areas:

■ **The first element is the deadline for the owner or possessor (the person in possession of the item) to react.**

The Federal Council proposes not to set a time limit in hours (48 hours or 72 hours, for example) but to set the start of the time limit for exercising the right of repossession immediately after the possessor, having exercised the necessary diligence, has become or could have become aware of the usurpation.

Article 926 para. 1 CC reads as follows and remains unchanged: 'The possessor has the right to repel by force any act of usurpation or disturbance'.

The current wording of article 926 para. 2 CC is as follows: 'He may, where the thing has been taken from him by violence or clandestinely, take it back immediately, by evicting the usurper in the case of immovable property and, in the case of movable property, by snatching it from the spoliator caught in the act or arrested while fleeing'.

The Federal Council proposes the following new wording for Article 926 para. 2 CC: 'Where the thing has been taken from him by violence or clandestinely, he may take it back, as soon as he becomes aware of the usurpation and has exercised due diligence, by evicting the usurper in the case of immovable property and, in the case of movable property, by snatching it from the spoliator caught in the act or arrested while fleeing'.

■ **The second element is the concrete intervention of the authority.**

The current wording of Article 926 para. 3 CC is as follows: He (i.e. the possessor) must refrain from any assault not justified by the circumstances.

The new text proposed by the Federal Council is as follows: 'He must refrain from any assault not justified by the circumstances; the competent authorities shall ensure that he has the intervention required by the circumstances in good time'.

In its Explanatory Report on the amendment of the Civil Code of 2 September 2020, the Federal Council explains the following: 'Article 926(3) AP-CC specifies the intervention of the authorities on two points. On the one hand, the possessor may use force to protect his property only if the competent authorities are unable to provide him in good time with the intervention required by the circumstances. [...]. Secondly, the case law developed by the Federal Court in relation to the obligation of the police to intervene has been codified. That said, federal law can only specify the principle of proportionality in relation to the protection of possession, insofar as the cantons have legislative jurisdiction over police law and the protection obligations arising from fundamental rights are not absolute. The principles of expediency and subsidiarity will therefore continue to apply, and the latitude available to the police authorities when it comes to evacuating occupied buildings will remain intact'.

■ **The third element relates to new provisions on civil procedure, and it is certainly here that the real novelties lie.**

In its aforementioned Explanatory Report, the Federal Council explains the following: ‘... it is planned to adapt the CPC in such a way as to make it more favourable to possessors. Measures to protect possession, such as the ban on possession (Art. 258 et seq. CPC), will be extended. The new court order as an act of voluntary jurisdiction will strengthen the protection of possession and thus the protection of property. According to the preliminary draft, such an order may be requested from a judge in the event of unlawful occupation, but also for any act of disturbance or usurpation of property. In the spirit of current law, the aim is to strengthen the protection of possession and ownership as a whole, and not just protection against unlawful occupation. The essential novelty lies in the fact that the judge will be able to order the removal of the disturbance and the restoration of possession by addressing an indeterminate circle of people. In this way, people suffering unlawful occupation will no longer have to endure the procedural inconvenience associated with the fact that it is impossible to determine who the squatters are, in particular because they change regularly. In order to ensure that those affected by the court order enjoy their procedural rights, the principles governing the right to a fair hearing must be respected.

The Federal Council is proposing to introduce a new Article 248 let. c CPC, which will read as follows: ‘The summary procedure applies to: c. general injunctions and general orders’.

But it is above all the introduction of new Articles 260a CPC and 260b CPC that is new.

The new Article 260a will read as follows: ‘A person whose possession of real property is disturbed or usurped may require the court to order the cessation of the disturbance or restitution against unknown persons. The applicant must provide proof of possession by title and make it likely that the disturbance or usurpation is unlawful. The court shall rule immediately and take the necessary enforcement measures’.

As for the new article 260b CPC, it will read as follows: ‘The opposition period is ten days from the day on which the notice is published and placed on the property; in addition, articles 259 and 260 apply by analogy’.

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[1] <https://www.tdg.ch/votations-le-combat-sur-le-front-du-logement-est-programme-488933144018>

[2] <https://www.centrepatronal.ch/actualites/amenagement-territoire-immobilier/lutte-contre-le-squat-oui-au-projet-de-revision-du-code-civil/>

[3] <https://www.rhf.admin.ch/bj/fr/home/aktuell/mm.msg-id-80256.html>

[4] <https://www.bj.admin.ch/bj/fr/home/aktuell/mm.msg-id-99423.html>

[5] <https://www.fedlex.admin.ch/eli/fga/2024/117/fr>

Source :
<https://www.wg-avocats.ch/en/actualites/unlawful-occupation-of-a-building-and-simplifying-action-against-unlawful-occupation-the-next-battle/>