



In summer 2012, as part of the Poverty is Not a Crime campaign, Housing Rights Watch conducted a survey of national laws that penalise or criminalise the behaviour of people who are homeless. Legal experts prepared country reports that describe the nature of anti-social behaviour laws, as well as other regulations or ordinances that affect homeless people.

The information in these reports was gathered from as many sources as available at the time they were prepared with publically available information only; some sections are incomplete due to the inaccessibility of the required data or lack thereof.

Hungary

1. Introduction

2. Criminal Offences

3. Administrative Offences

Act II of 2012 on offences, the procedure in relation to offences and the offence record system (the “Act on Offences”) effective from 15 April 2012 sets out prohibited offences, their legal consequences and the relevant procedural regulations as well.

According to the Act on Offences, acts or omissions prohibited by Acts of Parliament that are dangerous to society shall qualify as offences. These offences do not qualify as criminal offences but as minor misdemeanours. It is only Acts of Parliament that may prescribe certain conduct as offences, while decrees of the government or municipalities may not. Nevertheless, prior to the entering into effect of the Act on Offences, local municipalities were also entitled to determine conduct that qualifies as offences and are prohibited on the territory of the municipality. However, according to the Act on Offences, local municipalities are obliged to annul the provisions regarding offences set out by decrees of such local municipalities by 31 May 2012, and thus, decrees adopted by local municipalities may no longer create new offences and all existing offences must be removed. On the basis of Act 189 of 2011 on Local Municipalities effective from 15 April 2012, however, local municipalities are entitled to determine prohibited conduct that is against the community. Please see section I.4 of this Memorandum in this regard.

Offences directly affecting homeless people

Prohibition on habitual residence in public places

Under section 186 of the Act on Offences, the use of urbanised public places improperly for the purposes of habitual residence, or the keeping of movables in public places for the purposes of habitual residence shall qualify as an offence. The commission of such offence

may not be established if the local municipality does not provide the conditions for homeless care.

The Act on Offences defines public places as follows. Public places are those places, irrespective of the person of the owner, that are available to everybody without restrictions or under the same conditions. It is not clear whether the offence may be established by the authorities if, for example, homeless-care and related institutions exist in the given area, but they are not available for the affected homeless persons due to lack of vacancies. Thus, the conditions to be provided by the municipalities (the absence of which may result in an exemption from the sanctions) are not precisely determined by such provisions.

Begging

Under section 185 of the Act on Offences, begging in the company of a child qualifies as an offence. In addition, begging by way of accosting passersby or persons being present at a public place for the purposes of giving money, or by way of going house to house for begging shall also qualify as an offence.

Offences indirectly the homeless

While the offences indicated in the section above can be directly linked to homeless people, we would also like to highlight a few provisions in relation to prohibited conduct, which while addressed to the whole of society, but might primarily affect homeless people.

Offence against public cleanliness

Under section 196 of the Act on Offences, littering or dirtying public places, buildings available for the public, public transport, or the failure to ensure the removal of dirt caused at the above places by an animal being under someone's supervision, shall qualify as an offence.

Prohibited bathing

According to section 202/A of the Act on Offences, bathing in a prohibited area shall qualify as an offence. According to the relating regulations, prohibited areas may include areas such as rivers, ponds and lakes located in urbanised area of towns (except prescribed swimming areas), at night and if the visibility is not sufficient, at ports or on shipping routes, etc.

Miscellaneous ordinances and decrees

As indicated in section I of this Memorandum, from the entry into effect of the Act on Offences, local municipalities are not entitled to determine offences, and all offences determined by municipalities' decrees had to be repealed by 31 May 2012. Nevertheless, section 51 (4) of Act 189 of 2011 on Local Municipalities sets out that local municipalities may determine prohibited conduct that is against the community. Local municipalities may determine in such decrees the imposition of a fine against the person committing such conduct of up to HUF 150,000, or up to

HUF 50,000 if an on-the-spot fine is imposed. In addition, section 143 (4) also entitles local municipalities to determine by decree conduct that is materially against the community and to determine the rules of imposing fines on persons committing such conduct.

On the basis of the above, local municipalities are entitled to determine local regulations on the basis of which homeless people may be fined. As an example, based on the authorisation granted by Act 189 of 2011 on Local Municipalities, the 8th District Municipality of Budapest passed a decree under no. 32/2012 (V.21.) in relation to prohibited conduct that is against the community. Among others, the following conduct qualifies as such conduct under the above-referred to decree that may affect homeless people:

Drinking alcohol in public places, in which case an on-the-spot fine of up to HUF 50,000 may be imposed;

Improper use of green areas, such as persons over 16 using playgrounds; bathing in fountains or lakes; camping or creating temporary accommodation in public places, in which cases an on-the-spot fine up to HUF 50,000 may be imposed.

Repression linked to offences

Sanctions

The primary sanction relating to the prohibited conduct referred to above is a fine, the amount of which may be between HUF 5,000 (approx. EUR 17) and HUF 150,000 (approx. EUR 517). If the person committing an offence has been held liable at least twice for any offence that may be penalised with a fine within the 6 months preceding committing the offence, such person may be put in prison for a maximum of 60 days. No custodial sentence may be established if an “on-the-spot fine” was imposed.

An on-the-spot fine may be imposed if the person committing an offence admits the offence on the spot. The amount of the on-the-spot fine may be between HUF 5,000 (approx. EUR 17) and HUF 50,000 (approx. EUR 170). Should the person commit the offence again within 6 months, the fine may be increased for the second offence up to HUF 70,000 (approx. EUR 240). If the person acknowledges the imposition of the on-the-spot fine, no appeal may be submitted against such fine. Should the person not acknowledge the imposition of the on-the-spot fine, a procedure is commenced by the competent authorities and under the general rules, dependent on the outcome of the procedure, a fine between HUF 5,000 (approx. EUR 17) and HUF 150,000 (approx. EUR 517) may be imposed.

4. *Appeals procedure*

The procedure must be completed by the authority within 30 days from its commencement, which deadline may be extended with another 30 days if such extension is necessary due to the complexity of the case or any other unavoidable difficulty. If the facts of the case are clear and no hearing is necessary, the authority imposes a fine or applies a sanction (such as a warning). In such a case, the authority passes its resolution based on the documentation. The person against whom the procedure is brought may ask the authority to hold a hearing within 8 days following the passing of the resolution. At such hearing, the authority may withdraw its previous resolution

and adopt a new one. If the presenting of evidence is necessary and the authority cannot pass its resolutions based on the documentation, the authority may request more information or hold a hearing.

The person against whom a procedure is brought may challenge any resolution adopted in relation to the merits of the case within 8 days following the delivery to them of the resolution, provided that no on-the-spot fine was imposed. On the basis of the challenge, the authority may change its resolution; otherwise it forwards the documentation and the challenge to the competent local court. The court has 30 days to adopt its decision.

Conversion of fine to imprisonment

If the person committing an offence fails to pay the imposed fine, the fine will be transformed into a sentence of imprisonment, where each HUF 5,000 (approx. EUR 17) of fine equals one day imprisonment. The fine may also be changed into community service subject to the agreement of the affected person, where each HUF 5,000 (approx. EUR 17) of fine equals six hours of community service. In such a case, the person may apply for community service within three business days following the expiry of the deadline for the payment of the imposed fine, otherwise, imprisonment must be imposed instead of the fine (and the community service).

5. National Case Law

The commissioner for fundamental rights in Hungary plays an active role in relation to the protection of the rights of homeless people. The commissioner has recently published several reports and initiated the annulment of several laws before the Constitutional Court relating to the criminalisation of homelessness. We have summarised two procedures below, one of which resulted in the annulment of the relevant municipality's decree by the Constitutional Court, while the other procedure has not reached a final decision to date. In addition to the procedures summarised below, the commissioner also initiated a procedure before the Constitutional Court in relation to the amendment of decree no. 62/2007 of the 8th District Municipality of Budapest, according to which rummaging through garbage qualified as an offence. The relevant provisions of the decree became ineffective in the meantime due to the adoption of the Act on Offences, under which local municipalities are no longer entitled to create new offences (as indicated in the introduction to section I above).

Rummaging through garbage

The Municipality of Kaposvár passed a decree under no. 33/2005 (VI.27.) setting out that a person who empties, takes out garbage from the containers placed on public places or rummages through it commits an offence and is subject to a fine of maximum HUF 30,000. The commissioner for fundamental rights issued a report in this regard and also initiated a procedure before the Constitutional Court. According to the report of the commissioner, the persons affected by the above provisions are persons living in poverty, and the purpose of rummaging through garbage is to fight against starvation. Sanctioning and stigmatising this conduct is not an acceptable step, while the system of public services and social benefits does not provide sufficient aid to these people. According to the report, there are no constitutional grounds and justified

lawful reasons for penalising rummaging through garbage. The above provision restricts the fundamental rights of such persons (such as the right to self-determination, freedom of action and human dignity) by failing to meet the requirement of such restrictions to be proportionate and necessary. The commissioner indicated that while the decree is formally applicable to everyone, it is in fact against a determined group of society.

On the basis of the submission of the commissioner, the Constitutional Court annulled the decree of the Municipality of Kaposvár as being in breach of the Constitution of Hungary. According to the resolution of the Constitutional Court no. 166/B/2011, there is no constitutionally justifiable, real and legitimate reason for the restrictive provisions. As rummaging through garbage does not infringe either the rights of other persons or law and order, the dangerousness to society of the affected conduct cannot be established. Penalising such conduct endangers the livelihood of the affected persons and their families. The Constitutional Court also established that it must be ensured that laws applicable to everyone must not result in the de facto and constitutionally unjustified discrimination of a determinable part of society, as, according to the Constitutional Court, it breaches the prohibition of discrimination on the basis of “other status” indicated in the Constitution of Hungary effective at the date of the resolution of the Constitutional Court.¹

Habitual residence in public places

Prior to the entering into effect of the Act on Offences, the Metropolitan Municipality of Budapest passed an amendment to decree no. 59/1994, effective from 17 May 2011 upon the authorisation set out in Act LXXVIII of 1997 on the Modification and Protection of Built Environment². The above amendment of the decree set out the prohibition of habitual residence in public places (the same provision as indicated in section I.1. of this Memorandum), while the previous Act on offences (i.e. Act LXIX of 1999) was also supplemented with an offence with effect from 1 December 2011 in relation to the repeated breach of the prohibition of habitual residence in public places. The commissioner published a report in this regard and also initiated a procedure in front of the Constitutional Court for the annulment of such regulations.

The main reasons indicated in the submission of the commissioner were that such provisions criminalise homelessness itself, as a situation or status, which breaches the right to equal dignity. Homelessness itself does not infringe anyone’s rights or does not cause any damage, and thus, such provisions unnecessarily and disproportionately restrict the rights of the affected persons without any justifiable reason.

Upon the Act on Offences entering into force, the legal regulations referred-to in this section II.2 became ineffective. Nevertheless, as indicated above, the Act on Offences also penalises habitual residence in public places, and therefore, the commissioner modified the submission indicated in this section II.2 requesting the annulment of the relevant sections of the Act on Offences (i.e. section 186), as being in breach of the rule of law, and the right to life and human dignity. Such

¹ A new Constitution was adopted by the Parliament of Hungary with effect from 1 January 2012. Article XV of the new Constitution also includes that Hungary shall ensure the fundamental rights to everyone without any discrimination (including on the basis of “other status”).

² Section 54 (6) of such Act sets out that decrees of municipalities may declare that the improper use of public places shall qualify as an offence.

modification was submitted to the Constitutional Court in May 2012; we are not yet aware of any decision in this regard by the Constitutional Court.

6. International Case Law

As indicated above, the commissioner for fundamental rights has challenged certain legal regulations, as, in his opinion, they are in breach of basic constitutional principles, such as law and order, human dignity, freedom of actions or the prohibition against discrimination.

Such values and principles are also fundamental elements of international human rights law to which Hungary is a signatory; for example, the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights includes the requirement of equality and non-discrimination.³ Similarly to both article 70/A of the previous Constitution of Hungary and article XV of the newly adopted Constitution effective from 1 January 2012, such international sources of law also prohibit discrimination based on “other status”. Any restriction of human rights must have a justified reason and must comply with the general and fundamental principles of human rights law.

³ Article 2 of the Universal Declaration of Human Rights: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26 of the International Covenant on Civil and Political Rights: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.