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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 Netherlands

1. Introduction

According to the 2011 Human Development Index Ranking compiled by the United Nations Development Program, human development (i.e. the standard of living and quality of life) in the Netherlands is one of the highest in the world. In terms of overall health, education and living standards, the Netherlands is ranked third worldwide and second in Europe.¹ In addition, according to other research, the capital of the country, Amsterdam, is considered as a leading city in the production and maintenance of social housing.² Social housing in the Netherlands is not directly run by the government but by cooperatives founded by churches or political parties.³

Nevertheless, like everywhere else, homelessness is a problem also in the Netherlands. It is estimated that there are about 30,000 homeless people in the country.⁴ In absolute numbers, in the Netherlands, and mainly Amsterdam, there are more homeless people now than there were 15 years ago,⁵ and due to the changing economic circumstances their number is expected to increase further in the coming years.⁶ It is said that: “*The increase in the number of homeless people in Amsterdam consists largely of mentally ill people who would have been admitted to a mental hospital 20 years ago and of older, long-term heroin abusers who can no longer live independently.*”⁷

Homelessness is a complex phenomenon which creates various social, economic and legal issues. “*Homeless policy has always been ambivalent. On the one hand, the aim is to support the*

¹ Human development statistical annexes, p. 126, available at: http://hdr.undp.org/en/media/HDR_2011_EN_Tables.pdf.

² John I. Gilderbloom, Matthew J. Hanka, Carrie Beth Lasley, *Amsterdam: Planning and Policy for the Ideal City?*, p. 20, available at: http://sun.louisville.edu/pdfs/Amsterdam_Article.pdf.

³ *Ibid.*

⁴ See: <http://www.feantsa.org/code/en/country.asp?ID=12&Page=22>.

⁵ Johan Slegers, “Similarities and Differences in Homelessness in Amsterdam and New York City”, *Psychiatric Services*, VOL. 51, No. 1, p. 1, available at: <http://ps.psychiatryonline.org/data/Journals/PSS/3533/100.pdf>.

⁶ See: *The Amsterdam Herald*, 4 June 2012, available at: <http://www.amsterdamherald.com/index.php/allnews-list/330-20120604-amsterdam-braces-itself-huge-rise-homelessness-shelter-fallout-economic-crisis-city-council>

⁷ *Ibid.*

homeless with their re-entry into the society, and, on the other hand, the aim is to combat their amoral lifestyle and curb the nuisance they cause.”⁸

Throughout Europe there seems to be a growing legislative trend towards the criminalisation of homelessness, e.g. by imposing penalties on certain types of behaviour that are engaged in more frequently by homeless people. Aside from the direct criminalisation of homelessness itself, the criminalization against homeless people can also be imposed indirectly, e.g. by banning activities like drinking in public or sitting in public places. Below, we examine if there is legislation in the Netherlands that, in law or in fact, criminalises conduct that typically goes along with the status of being homeless.

2. Criminal Offences

Offences indirectly affecting the homeless

Trespassing (Articles 138 and 139 of the Dutch Criminal Code)

Under the first paragraph Article 138 of the Dutch Penal Code, any person who unlawfully enters or dwells in a private apartment or an enclosed area and does not leave immediately, despite requests of the owner, is liable to a fine or a custodial sentence not exceeding six months.

Similarly, according to Article 139, “whoever unlawfully enters or dwells in a room devoted to public service is punished with a fine or a custodial sentence, not exceeding three months.”

Squatting (Articles 429quinquies, 429sexies of the Dutch Criminal Code)

With respect to squatting, legislation in the Netherlands was historically very liberal and has always shown tolerance in this regard it. However, on 1 October 2010, Article 429sexies (providing that squatting is not prosecuted if a building has not been used for a period of twelve months, and the owner cannot demonstrate that he plans to ‘soon’ start using the building again) was overturned and another law, Wet van 24 juli 2010, treating squatting as a criminal offence came into force. Squatting can be penalised by one year’s imprisonment or more, if violence is involved.⁹ The new squatting ban, passed by the House of Representatives on 15 October 2009 and the Senate on 1 June 2010, and which entered into force on 1 October 2010, caused quite some public unrest.¹⁰

Disturbances (Article 431 of the Dutch Criminal Code)

⁸ Willibrord de Graaf, Lia Van Doorn, Raymond Kloppenburg, Catelijne Akkermans, “Homeless Families in the Netherlands: Intervention Policies and Practices”, *Journal of Social Research & Policy*, Volume 2, Issue 1, July 2010, p.6 available at:

<https://docs.google.com/viewer?a=v&pid=sites&srcid=ZGVmYXVsdGRvbWFpbncqcnNwb25lfGd4OjQ0ZGY5Y2Y2MDc3MjgyMTI> .

⁹ See: http://en.wikipedia.org/wiki/Netherlands_Squatting_Ban .

¹⁰ *BBC News*, 4 October 2012, available at: <http://www.bbc.co.uk/news/world-europe-11458225> .

Under Article 431 of the Dutch Criminal Code, whoever causes noise by which sleep can be disturbed, is liable to a fine. This general penal provision could potentially be applied against homeless people.

Public drinking (Article 453 of the Dutch Criminal Code)

Article 453 of the Dutch Criminal Code criminalises the act of being in a state of obvious drunkenness in public. Such behaviour is penalised by imprisonment not exceeding twelve days, or a fine. It would appear that it is not an offense simply to *be* drunk as long as nobody is disturbed, as such a state of drunkenness would hardly qualify as ‘obvious’. Nevertheless there is a certain risk for homeless people to be prosecuted under this provision.

Failure to comply with an order (Article 184 of the Dutch Criminal Code)

According to Article 184(1) of the Dutch Criminal Code whoever intentionally fails to comply with an order issued, or a formal request made by a public servant charged with any supervisory task, or by a public servant charged with the detection or investigation of criminal offences or who has been authorized to detect or investigate criminal offences, and whoever intentionally prevents, obstructs or thwarts any action undertaken by such public servants to enforce a legal requirement, is liable to a term of imprisonment of not more than three months, or a fine.

In essence, this provision criminalizes disobedience. It can be used by law enforcement agencies against homeless people if they refuse to comply with an order of an official, in particular police officers, even on minor issues, to criminalise non-compliance.

3. Administrative Offences

Amsterdam general local ordinance

The general local ordinance (*Algemene Plaatselijke Verordening*) of the municipality of Amsterdam contains various provisions that can potentially have an impact on homeless people. Under Article 443 of the Dutch Criminal Code, infringements of municipal ordinances carry a custodial sentence not exceeding three months or a fine. The Amsterdam general local ordinance is in many ways more problematic than the Dutch Criminal Code; in particular the prohibition of sleeping in streets could be regarded as an inherent criminalization of homeless peoples’ status.

Consumption of Alcohol and Soft Drugs in Public

Under the second paragraph of Article 2.17 of the Amsterdam ordinance, the mayor can designate areas in which it is prohibited to consume alcoholic beverages or to carry open containers of alcoholic beverages. According to the official explanatory note, this provision is aimed at addressing problems in areas where groups of alcoholics, vagrants, etc. cause structurally alcohol-related nuisances, such as loud talking, yelling, harassing and intimidating passers-by, quarrels and fights, and pollution of the environment and the like. It would seem likely that homeless people, to the extent that they suffer from alcohol related problems, are affected by this provision.

Under the first paragraph of the said article, the consumption of alcoholic beverages in public areas, which are not designated by the mayor as areas in which consumption of alcohol and possession of opened containers of alcoholic beverages are forbidden, is furthermore prohibited if this disturbs the public order, the living environment or otherwise causes nuisance.

Under the fifth paragraph of the same Article, it is moreover prohibited to consume or openly carry soft drugs in areas designated by the mayor.

Causing an obstruction in or near buildings

It is prohibited, under Article 2.18 of the Amsterdam ordinance, for anybody other than the lawful occupant or user of a building, to lean against a door, window, or window sill or to remain in the vicinity of a building or to stay in common areas of a building without any reasonable purpose.

Gambling on the street

Pursuant to Article. 2.19 of the Amsterdam Municipal Ordinance, it is prohibited to play for money on the streets.

Sleeping on the streets

A provision that is particularly relevant to homeless people is Article 2.20 of the Amsterdam ordinance, as it prohibits and punishes the act of sleeping on the streets, as well as in a vehicle, boat, caravan, tent or the like. However, the Municipality can grant an exemption. According to the explanatory note, the objective of this prohibition is, among others, to prevent public health risks.

Begging

Another relevant provision of the Amsterdam Municipal Ordinance is the ban on begging enshrined in Article 2.21. As the explanatory note states, begging is not punishable under the Dutch Criminal Code. However, begging can lead to serious troubles, in particular in case of intrusive and aggressive begging, and is therefore banned in the city of Amsterdam.

Offences directly affecting homeless people

Offences indirectly affecting the homeless

Miscellaneous ordinances and decrees

Repression linked to offences

Sanctions

4. **Appeals procedure**
5. **National Case Law**

Although, the Dutch Supreme Court (Hoge Raad) decided, on 28th October 2011, that the legally forced end of squatting can only occur after an intervention of a judge,¹¹ the fact remains however that squatting is a criminal offence under Dutch law and homeless people are not unlikely to be criminalised as squatters if they occupy houses.

6. International Case Law

7. Additional Information

Eviction

Dutch tenancy laws are said to be relatively tenant-friendly.¹² Nevertheless, eviction on the grounds of rent arrears is not rare and is one of the basic factors leading to homelessness. Under Dutch law, the basic rental contract is one of unlimited duration, with a minimum term of one year. In case of contracts of limited duration, the contract will, in principle, automatically be converted into a contract of unlimited duration¹³.

Landlords can only give notice in strictly defined cases. In order to terminate the contract, a landlord must first give notice from three to six months. However, only a court can terminate the contract after that, so tenants enjoy protection of the court system and cannot easily be evicted.

Limited arrears in payment of rent are in general insufficient grounds for a termination of the contract. The courts will normally deny termination if the arrears amount to three months or less. Nuisances committed by tenants are accepted by the courts as sufficient ground for eviction only under special circumstances. If tenants fail to pay their rent, they will usually be sent a request to contact the housing association's department for debt collection to make a payment arrangement. If the tenant fails to comply with the request within three months, the bailiff will step in and try to collect the debt or make a payment arrangement. Only if that does not help, the tenant will receive a summons for a court hearing. At the hearing, the court has then the possibility to issue an eviction order, on the basis of which the tenancy agreement can be terminated. The actual eviction will usually be carried out within a month after the court hearing.¹⁴

Eviction is a serious problem, and has led to an increasing number of families in the Netherlands to become homeless. In addition, as there is no central register of homeless people in the Netherlands, there is insufficient information on this matter. However, there are some family support programs put in place, through an inter-agency cooperation. Each municipality has brought its own policy on homelessness into force, which generally consist of numerous agreements with housing corporations to prevent evictions.¹⁵

¹¹ See: http://en.wikipedia.org/wiki/Dutch_squatting_ban .

¹² See: <http://www.globalpropertyguide.com/Europe/Netherlands/Landlord-and-Tenant> .

¹³ *Ibid.*

¹⁴ See for an overview, Sten-Åke Stenberg, Lia van Doorn and Susanne Gerull, "Locked out in Europe: A Comparative Analysis of Evictions Due to Rent Arrears in Germany, the Netherlands and Sweden", available at: <http://eohw.horus.be/files/freshstart/European%20Journal%20of%20Homelessness/Volume%20Five/Volume%2005.2/article-2.pdf> .

¹⁵ Willibrord de Graaf et al, *o.c.*, p. 11: "Housing corporations usually take action after two months of rent arrears, in order to prevent huge debts accruing and to collect as much rent as possible. But they report this to a central point, so that social workers can start outreach interventions to offer support and redress the situation. Each city has these kinds of projects in place, and they have brought to light that rent arrears actually conceal numerous social and individual problems."

Right to Housing

According to the second paragraph of Article 22 of the Constitution of the Netherlands, it shall be the concern of the authorities to provide sufficient living accommodation. Interestingly, this “right” comes under the heading “health”. However, the provision is formulated in general terms and grants the government a very broad discretion as to how to implement this right. Therefore, it is arguable whether this provision has any legal content or whether it is purely programmatic.

Social assistance

Traditionally, policy in the Netherlands on homelessness has always been highly localised. More specifically, the state funds the municipalities, which are responsible for developing a concerted approach towards homelessness, within the legal framework that the Social Support Act (WMO)¹⁶ provides. The Social Support Act is a broad law, covering the local administration of support for social cohesion, educational assistance for youngsters and their parents, disabled persons, voluntary care, etc.¹⁷

In 2006 the Dutch national government, together with the four major Dutch cities (Amsterdam, Utrecht, Rotterdam and the Hague) agreed to develop a common long-term action plan, from 2006 to 2013, in order to tackle homelessness and at the same time reduce public nuisance.¹⁸ The goal of this strategy, in the long run, is to prevent public spaces from becoming the sleeping ground of the homeless population, but in turn to also support these people, improve their situation and promote their re-integration into the Dutch society, through various different ways.

The above-mentioned national action plan has four main objectives for Phase 1 (2006 -9):

- 90% of the 4,000 homeless must be in care (3,600). This means: four life domains must be met: housing, medical care, income, work;
- 60% of those (2,160) must be in stable care, which means: for at least 3 months;
- Reduction of evictions to 70% of the 2005 level; and
- Reduction of public nuisance by homeless to 75% of the 2005 level.¹⁹

These objectives have mainly been reached.²⁰ The first results appear to be positive. More specifically, last winter, the number of homeless people that slept outside on an average night was lower than the previous year.²¹

¹⁶ See: [http://hpm.org/en/Surveys/Erasmus_University_Rotterdam_-_Netherlands/04/The_Social_Support_Act_\(WMO\).html](http://hpm.org/en/Surveys/Erasmus_University_Rotterdam_-_Netherlands/04/The_Social_Support_Act_(WMO).html) .

¹⁷ Willibrord de Graaf et al, *o.c.*, p. 8.

¹⁸ *Habitact Peer Review on Homelessness Policies in Amsterdam*, p. 2-3, available at: http://www.kuleuven.be/lucas/pub/publi_upload/2010_7_KH_ED_habitact%20peer%20review_amsterdam.pdf .

¹⁹ See: http://www.habitact.eu/files/activity/policybank/_amsterdam2012.pdf .

²⁰ *Ibid.*

²¹ See: http://www.feantsa.org/code/en/pg.asp?Page=24&pk_id_news=5701 .

For Phase 2 (2010-4) the objectives have been defined as follows:

- Person-centered approach. 3,800 homeless people receive a comprehensive offer in four areas of life (housing, care, income, daily activities / meaning). The newly homeless (now estimated at 300 people per year) receive the offer. From 2013, a process is defined as stable when it has lasted at least a year;
- Prevention. In 2014, the number of evictions should reach 60% of the eviction rate in 2005 (baseline number is 1,064);
- Social relief. From 2014, the annual outflow from the municipal-funded residential facilities should be greater than the annual inflow. In 2014, the number of homeless people should be 50% of the number in 2010; and
- Participation. In 2014, at least 90% of homeless people applying for social support will be in daytime activities at least 3 days per week. In 2014, the use of social support services by former homeless people should be reduced to 50% of the number in 2010.²²

The Dutch policy for the homeless seems to have found the right balance on this complicated issue: by combatting homelessness, through cooperative support programs, it manages to also combat public nuisance, by keeping these people away from the streets. Thus, the improvement of homeless people' quality of life has also been seen as an improvement in the quality of life of the country in general.