



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.

Poland

1. Introduction

No Polish laws have been introduced specifically to penalise the homeless, though certain everyday activities related to homelessness are penalised, usually by the Code of Petty Offences. For instance, bathing in forbidden areas, begging and the fouling and littering of public places are all subject to fines. In addition, domestic trespass is a criminal offence subject to a fine or imprisonment of up to one year.

This chapter provides general information regarding the penalisation of homelessness in Poland. Our legal analysis was limited to the relevant criminal legislation and its application in practice. We also reviewed press releases issued within the last five years and analysed the law pertaining to the survival needs of the homeless in Poland and demands raised in the public sphere in respect of those needs. These issues are of a more general character and are presented first.

2. Criminal Offences

Offences directly affecting homeless people

We did not identify any statutory law expressly introduced in order to penalise the homeless or certain groups of homeless people. The laws indicated below, which may be applied to the homeless, have been present in the Polish legal system for many years (the Code of Petty Offences (within this chapter, the “Code”) dates back to 20 May, 1971 (*Kodeks wykroczeń z dnia 20 maja 1971 roku* (Dz.U. 2010, No. 46, item 275)). The laws which are most likely to be applied to the homeless protect such basic values as property, decency in public spaces and a healthy living environment. Naturally, these provisions are applied in the same way to all citizens if they commit any of these offences. There is no indication that Polish law allows for disproportionate measures against the homeless in any area of legal protection.

Begging

Begging in a public place is a petty offence (a misdemeanour) under Polish law. Begging is committed if the perpetrator (i) has a livelihood, (ii) is able to work, or (iii)

commits obtrusive or fraudulent begging.¹ This provision entered the Polish legal system under the communist regime when the state provided employment to each and every individual. Since the collapse of the regime, it is commonly understood that the ability to work is not tantamount to the ability to find and sustain employment. Therefore, the ability to work amounts to a situation in which an offence may be committed on paper, but it is highly unlikely that any court would hold an individual liable for begging on this ground. Liability for mere begging may consist of a fine of up to PLN 1,500 (approximately €365) or a reprimand. Receiving money for playing an instrument, drawing a portrait or some other performance or service does not constitute begging.

The Code contains a special provision related to obtrusive or fraudulent begging. Obtrusive begging is committed if the perpetrator follows the potential benefactor, repeats the pleading, repeatedly pleads with the same person, or insults, threatens or grabs the potential benefactor. Fraudulent begging means pretending to be handicapped, blind, seriously ill or in very miserable circumstances (for example if the beggar claims untruthfully that he or she is a widow(er) and the sole breadwinner of the family, a disabled veteran, or that he or she has lost property in a fire or a disaster). The liability of the perpetrator under this provision is independent of his or her ability to work, and it carries the penalty of detention or restriction of liberty.

Offences indirectly affecting the homeless

Trespassing

Forcing one's way onto another person's private property (*e.g.* a house, apartment, business establishment, storage space or fenced plot of land) and failing to comply with a demand from an authorised person to leave such a place are criminal offences. Perpetrators are subject to a fine, restriction of liberty or imprisonment of up to one year.² According to Polish jurisprudence, protection against unauthorised trespass of private property applies irrespective of whether the owner is an individual, a legal entity or a public or social institution without legal capacity.³ This means that such protection is extended to legal entities such as municipalities or the State Treasury, which, in some instances, may own seemingly abandoned real estate. Occupying any real estate without a legal title may therefore constitute criminal domestic trespass if the property was in any way protected so as to suggest that entry had to be forced (for example by a fence or lock), or if the occupants refuse to leave the space at the request of an authorised person (such as the owner, tenant, or custodian). The protection is not limited to inhabited spaces (*e.g.* houses, apartments and hotel rooms), but also covers premises used for commercial and social purposes (such as warehouses, restaurants and offices) and even fenced plots of land.

On the other hand, unauthorised trespass may also be committed by law enforcement authorities against people living in a building commonly referred to as a squat. Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms protects the individual's right to respect for his home, *i.e.*, the place or physically defined area where private and family life develops. This means that unauthorised

¹ Article 58 of the Polish Code of Petty Offences.

² Article 193 of the Polish Criminal Code (*Kodeks karny z dnia 6 czerwca 1997 roku* (Dz.U. 1997, No. 88, item 553).

³ Judgment of the Supreme Court of 3 December, 1991, case file no. V KRN 84/90, published in OSNKW 1990, No. 3-4, item 27; resolution of the Supreme Court of 13 March, 1990, case file no. V KZP 33/89, OSNKW 1990, No. 7-12, item 23.

entry into a person's home constitutes a breach of that right. The European Tribunal of Human Rights found, in the judgment dated 18 July, 2009 (Case No. 47709/99), that this protection applied to a person who “lived with a group of friends (...) mostly students, in an old and decrepit house they had rented (who) occasionally invited their friends to spend a night or a couple of days in their house.” The house was inspected in the middle of the night by a large group of police officers carrying truncheons and accompanied by dogs. The only reason for the intrusion was the fact that there was an unlocked car parked in front of the house. The Tribunal found that the Polish police had violated Article 3 and Article 8 of the Convention and awarded the applicants pecuniary compensation from the Polish government. It should be noted that the “squat” in question was legally occupied (rented) by at least one of its inhabitants.

While entering somebody's house is a criminal offence under the Polish Criminal Code, the Code of Petty Offences penalises the refusal to leave someone else's land, such as a forest, field, garden, pasture, meadow or causeway under Article 157. The offence is penalised only at the request of the injured party and is subject to a fine up to PLN 500 (approximately €120) or a reprimand. The offence does not apply to state forests.

2.2.3. **Bathing in forbidden areas**

The Code penalises bathing in forbidden areas under Article 55. This offence is subject to a fine of up to PLN 250 (approximately €60). Commentaries to this Article explain that this provision is aimed at preventing individuals from bathing in dangerous places for the sake of their safety, both in terms of the risk of drowning, and also the condition of the water. In practice, this provision is applied to bathing in places which may be infected with dangerous fungi, bacteria and viruses, such as city fountains. Homeless people may therefore be found guilty of committing this offence when bathing in shallow public fountains.

2.2.4 **Minor fraud**

Article 121 of the Code penalises the use of public transport without intending to pay the fare. The offence is committed when a person uses public transport in such way for the third time in the course of one year, having failed to pay two fines calculated according a specified tariff. A similar offence is committed by obtaining, without intending to pay, food or drink in a place where they are served, using a means of transport, such as a taxi, entering an art, entertainment or sporting event, or using a machine or other similar service which one knows to be subject to payment. The penalty for committing such an offence is detention, restriction of liberty or a fine.

2.2.5. **Theft from a garden**

Stealing small quantities of fruit, vegetables or flowers from a garden is penalised only at the request of the injured party. The perpetrator may be fined up to PLN 250 (approximately €60) or reprimanded under Article 123 of the Code.

2.2.6. **Indecent behaviour**

The Code penalises indecent behaviour in public spaces under Article 140. Indecent behaviour is defined as acting in a shocking way, in violation of social norms. It is judged from the perspective of a common citizen. An example of such behaviour is defecating in public areas (streets, passageways and the like). Acting discreetly (such as hiding behind a tree or other objects) acts as a defence. Indecent behaviour is

penalised by detention, the restriction of liberty, a fine of up to PLN 1,500 (approximately €365) or a reprimand.

If the indecent behaviour disrupts public order, sleep or provokes outrage in a public space, it constitutes the offence of disrupting the peace, penalised by detention, restriction of liberty or a fine under Article 51 of the Code. This offence may in some instances be committed by shouting or making other noises.

2.2.7. **Fouling and littering**

Fouling and littering public places, in particular roads, streets, squares, gardens, lawns and green areas, is subject to a fine of up to PLN 500 (approximately €120) or a reprimand under Article 145 of the Code. Fouling refers to the act of introducing unwanted objects or occurrences to the air, water or soil; such objects or occurrences include all kinds of substances (organic and non-organic), smoke, heat, noise, vibrations and electromagnetic fields. The inclusion of the emission of smoke and waste under this Article may be particularly relevant to the homeless.

2.2.8. **Minor forest damage**

It is forbidden to obtain or gather tree resin, bark, cones, moss, forest litter, branches, shavings, grass, herbs, turf or birch sap, or to damage trees in any way, in a forest belonging to someone else. Mushrooms and forest fruit should not be gathered in banned areas or in a prohibited manner. All of these acts are subject to a fine of up to PLN 250 (approximately €60) or a reprimand under Article 153 of the Code. This offence does not apply to state forests.

3. **Administrative Offences**

3.2. *Offences directly affecting homeless people*

3.3. *Offences indirectly affecting the homeless*

3.4. *Miscellaneous ordinances and decrees*

3.5. *Repression of offences*

3.5.5. *Sanctions*

4. **Appeals procedure**

5. **National Case Law**

6. **International Case Law**

7. **Additional Information**

The Polish press regularly reports on the problem of homelessness. Serious incidents concerning the homeless usually involve murder or manslaughter committed by private individuals. Some of the press reports focus on places inhabited by homeless people (such as “squats”). There have been situations where homeless people have lived in a small summer shed where they have valid legal title to the land; in such situations the authorities may enforce the obligation to have garbage

removed by an appropriate service provider or to build a septic tank, and impose a fine for failure to fulfil these obligations. Some squats have become well known because of their association with an underground artistic movement (*e.g.*, the so-called “Elba” on Elbląska Street in Warsaw, recently recovered by its landowners). More generally, homelessness is often reported on in the contexts of social indifference and attempts to research and improve the situation of the homeless. Some reports concern the unknown identity of people who have been found in the streets by the police and taken to shelters or to support operations which are carried out in times of severe winter weather. The general impression from the press reports is that in the last five years there have been no major actions aimed at criminalising the homeless in Poland.

7.2. Survival Needs

According to press releases, Warsaw hosts the largest number of homeless people of any location in Poland. They are attracted by places in shelters (there are around 1500 such places), eating stations (of which there are around 10), medical care and heated rooms, which are vital in the winter time. The capital also provides more urbanised public areas, such as train stations (the homeless may try to avoid trouble by purchasing cheap tickets) or underground passageways (although some of these are guarded by the police).⁴ Most of the shelters and some of the eating stations provide help only to sober individuals. Municipalities such as the City of Warsaw are obliged to provide social aid to the homeless pursuant to the Act on Social Assistance of 12 March, 2004.⁵ This aid includes providing shelter, food and indispensable clothing, assisting in times of crisis (for example by providing legal or psychological advice and emergency shelters to victims of violence), assisting people disabled by age or disease, funding burials, and providing financial allowances and benefits (including healthcare). Homeless people may also enlist on individual programmes designed to help them get out of homelessness (these are provided for under Article 49 of the Act on Social Assistance of 12 March 2004).

Hospitals and other healthcare institutions are obliged to provide healthcare services to everyone in life- or health-threatening situations.⁶ Due to this obligation, hospitals often receive homeless people that other institutions refuse to take in. The hospital fees are paid by the state, however such reimbursement requires a lengthy and formal administrative procedure.⁷ In the Polish health care system, certain homeless people, *e.g.* those whose identity is unknown, will not be entitled to primary and secondary healthcare, partly because of the lack of regulation concerning its funding. The general obligation to provide social aid to the homeless, which includes healthcare, lies with the municipalities. The Ministry of Health has received motions and questions regarding the lack of appropriate regulation in this area (for example, a submission was made on 3 August, 2011 by the Ombudsman, Ms. Irena Lipowicz). The Polish Constitution contains an obligation to provide healthcare to all citizens under Article 68. Foreigners living in Poland illegally are not entitled to any of these healthcare benefits.

All Polish citizens are entitled to obtain a Polish identity card and identity cards do not have to contain an address.⁸ However the lack of a residence does cause problems, for example in

⁴ This is a security measure, however in practice discourages the homeless from occupying these places.

⁵ *Ustawa z dnia 12 marca 2004 roku o pomocy społecznej* (Dz.U. 2009, No. 175, item 1362, with subsequent amendments).

⁶ Article 15 of the Act on Health Activities of 15 April 2011, *Ustawa z dnia 15 kwietnia 2011 roku o działalności leczniczej* (Dz.U. 2011, No. 112, item 654, with subsequent amendments).

⁷ This procedure is regulated by Article 54 of the Act on Healthcare Benefits Reimbursed from Public Funds of 27 August, 2004, *Ustawa z dnia 27 sierpnia 2004 roku o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych* (Dz.U. 2008, No. 164, item 1027, with subsequent amendments).

⁸ Article 37 of the Act on the Population Census and Identity Cards of 10 April, 1974 (*Ustawa z dnia 10 kwietnia 1974 roku o ewidencji ludności i dowodach osobistych*) (Dz.U. 2006, No. 139, item 993, with subsequent amendments).

dealing with banks (homeless people who have a source of income have had problems obtaining a debit card in some banks), finding temporary accommodation or renewing a driver's licence.

A general problem that we have identified with respect to the homeless in Poland is that the assistance which they are entitled to requires a lot of administrative effort and discipline on their part. The inability of many homeless people to deal with such obstacles often makes such assistance illusory.