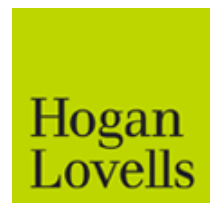




FEANTSA



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.

Spain

1. Introduction

The global economic crisis is causing severe prejudice in Spain. Unfortunately, the current situation is primarily affecting people with mid-low level incomes, which, together with wage freezes or reductions and tax increases is forcing up the cost of living.

As a result, there has been a significant increase in the number of homeless people in Spain. This increase in the number of homeless people entails a need to provide better protection to these people, given their vulnerable situation. However, Spanish legislative and administrative authorities seem to be taking an opposing course and are instead using legal barriers which make people's difficult lives even worse.

This report tries to identify and denounce regulations which clearly criminalise or penalise homeless people in Spain.

2. Criminal Offences

Under Spanish Criminal Law, there is not any provision that prevents people from begging in public spaces, because homelessness is not directly criminalized from a strictly criminal law perspective. However, this does not mean that homelessness is completely ignored by the Spanish Criminal Code. In fact, Article 232.1 of the Spanish Criminal Code contains a prohibition of using minors (children) or disabled people to beg, even if concealed, punishable by a sentence of imprisonment of six months to one year.

It is undeniable that a modern legal system, which respects fundamental rights, has to protect children from any attempt of exploitation. However, the criminal provision referenced above might be wide enough to easily lead to a criminalisation of homelessness. As we will see below, case law has construed this article separating the right of a mother to be with her children from the right of the child not to be used as an instrument to claim the generosity of people. Nonetheless, there are still cases in which the mother or the father are held criminally responsible for begging together with his/her children.

Cities are where homelessness is more visible. Therefore, municipal regulations have to be analysed in this report, as the majority of criminalisation of homelessness comes from local regulation, namely ordinances. Concretely, municipalities in Spain are very concerned about the

issue of visual homelessness. Consequently, we have identified many local regulations which try to prevent people from begging for money in the cities both through a direct or an indirect. As we did before regarding the criminalisation of homelessness under Spanish Criminal Code, we can divide the municipal legislation into two parts distinguished by the direct or indirect criminalisation of the homelessness provoked.

Offences directly affecting homeless people

We have included in this category regulations which prevent homeless from begging for money within the territory of each municipality, declaring it illegal and imposing sanctions which may vary generally from 750 Euros to 3,000 Euros.

Regarding the Region of Madrid, we have identified several municipalities which directly criminalised homelessness. In this sense, the Municipal Ordinance of Madrid bans any form of homelessness and establishes the obligation of taking the homeless to municipal shelters. Moreover, the Municipal Ordinance of Fuenlabrada establishes that, in protection of the basic necessities of citizens with not enough resources, homeless shall not be allowed within the municipality, even if it is concealed. Continuing with the Region of Madrid, the Municipal Ordinance of Alcalá de Henares, contains a provision similar to the one within the regulation of Barcelona. Another important city of Spain which directly criminalises homelessness is Barcelona. According to the Municipal Ordinance of Barcelona, Any conduct or appearance of homelessness in organized forms, harassment which might hinder and impede the free transit of people within the public spaces shall be forbidden.

Not only within the Region of Madrid and Barcelona is homelessness directly criminalised but also in other regions of Spain, such as the Region of Castilla y León. Concretely, the Municipal Ordinance of Valladolid forbids any conduct of homelessness in public spaces; in order to enforce this regulation, Local Police is entitled to move the person from where he/she is begging. Apart from that, the Municipal Ordinance of Burgos and the Municipal Ordinance of Aguilar de Campoo also prevent homeless from begging in public streets; however, these prohibitions are not extended to people who ask for money by making a musical, artistic or an entertainment performance upon local allowance and provided that it is not a persistent routine.

The referred exception is also provided in the Municipal Ordinance of Oviedo, in which a regulation directly criminalises homeless people by establishing that any conduct or behaviour involving a request for a donation shall be deemed as homelessness, and therefore is punished with a fine up to 750 Euros.

Seville is another municipality that seeks to push homelessness away from the city. Concretely, the Municipal Ordinance of Measures for the Coexistence of Seville "aggressive" forbids begging.

Direct criminalisation is also contained in regulations of other regions of Spain. In the region of Valencia, the Municipal Ordinance of Alicante, and in the region of Murcia, the Municipal Ordinance of Cartagena (dating from 1996) outlaw homelessness in very similar terms as Barcelona.

3. Administrative Offences

Offences directly affecting homeless people

As seen above, there are certain municipalities which directly criminalise homelessness by preventing homeless people from begging in public spaces and imposing on them a fine that is absolutely disproportionate to their economic status. However, there are other municipal laws which restrict or ban certain activities that consequently affect the rights of homeless people. By doing so, municipalities do not forbid homelessness, but in fact they criminalise homeless people indirectly. Thus, with this type of regulations, municipalities can impose fines on homeless people even if they are not begging for money.

Nuisance ordinances in Madrid

Starting with the city of Madrid, the Nuisance Ordinance of Madrid prohibits the manipulation, rummaging and extraction of leftovers within containers of supermarkets located at the streets. Additionally, this regulation prevents citizens from leaving movable goods on the streets. This entitles the Local Police to remove the belongings of homeless people and fine them. On the other hand, the Urban Environment Ordinance of Madrid does not allow anyone to camp in the city (this ordinance was alleged by the Spanish Government in order to prohibit certain demonstrations recently in Madrid).

Nuisance ordinances in Barcelona

Regarding Barcelona, the Municipal Ordinance of Use of Public Areas and Public Spaces of Barcelona contains the three provisions mentioned above regarding the ordinances of Madrid. Apart from that, the referred municipal ordinance also prevents people from being in public spaces without fulfilling minimum conditions of personal hygiene.

Offences indirectly affecting the homeless

Apart from establishing prohibitions which indirectly criminalise homelessness, municipalities also implement other policies apparently with a positive aim but which in fact conceal the intent to criminalise homelessness. This is the case of certain benches located in public spaces and parks which are divided into several parts so as to prevent people from lying down. These kinds of benches are located in cities such as Madrid or Barcelona.

Miscellaneous ordinances and decrees

The prohibition of manipulation, rummaging and extraction of leftovers within containers located in public spaces established by municipalities is very common in the municipal regulations. Together with the above mentioned cases of Madrid and Barcelona, homelessness is indirectly criminalised by the Municipal Ordinance of Urban Cleaning of Valencia, the Municipal Ordinance of Measures for the Coexistence of Seville, the Municipal Ordinance of Urban Cleaning and Treatment of Urban Solid Wastes of Zaragoza, the Municipal Ordinance of Urban Cleaning of Malaga.

Repression of offences

Sanctions

4. Appeals procedure

5. National Case Law

Ruling of the Supreme Court nº1731/2000 of 10 November

This ruling constitutes the first construction of the referred Article 232.1 of the Spanish Criminal Code. This case appeared before the Supreme Court as a consequence of a ruling issued by the Province Court of Zaragoza, which found a woman guilty who was begging for money holding her daughter in her arms and with his son playing next to her.

According to this ruling, the legal interest protected by this offence is the dignity of the minor who is used for the obtaining of money by begging. Otherwise, for example when the minors are with any of their parents but without begging for money, no crime is committed under Spanish criminal law.

Therefore, the woman was acquitted of the crime, provided that only she was begging for money but not her children.

Ruling of the Province Court of Seville nº4/2001 of 10 January

The Criminal Court of Seville found a woman guilty for a crime established in Article 232.1 of the Spanish Criminal Code, imprisoning her for 6 months, because she was surprised by the Infancy Protection Team with her baby begging in the streets.

Nonetheless, the appeal lodged by her was favourable for her interests, provided that the Province Court of Seville in the light of the Ruling of the Supreme Court acquitted her upon the same reasoning of that ruling, given that the baby was not begging but her mother.

Ruling of the Province Court of Gerona nº582/2009 of 17 September

The Criminal Court of Gerona found a homeless woman, María Consuelo, criminally liable, for the offence foreseen in Article 232.1 of the Spanish Criminal Code. She was punished with a sentence of imprisonment of 6 months for begging accompanied by a minor.

She lodged an appeal before the Province Court of Gerona, which acquitted her of the crime. In this ruling, the Province Court states that what is pursued by Article 232.1 is the prejudice to the dignity of the minor as he/she is used for begging. However, in this case, the minor was not even next to the woman, as Maria Consuelo only pointed the minor while she was begging for money. Moreover, the ruling introduces an interesting element in its reasoning: the sole fact of a person begging accompanied by a minor cannot be criminally relevant as the minor has to be with her/his parents.

Therefore, the homeless woman was found not guilty of the crime.

Ruling of the High Court of Justice of Cataluña 626/1999 of 19 June

The local police service of Barcelona punished a policeman for the ill-treatment of a homeless person who was begging on the street, the ill-treatment consisted of the attempt of snatching his things from him, hitting him and an attempt to burn his beard.

As a result of that, the policeman lodged an appeal before the High Court of Justice of Cataluña against the administrative sanction. However, the Court found him guilty because, according to the witnesses, the homeless neither provoked the Policeman nor did anything that could be deemed as an attempt to disobey the orders from the policeman. On the contrary, the homeless person was cooperative even though the officer was hostile.

Ruling of the Supreme Court nº1731/2000 of 10 November

This ruling constitutes the first reconstruction of the referred Article 232.1 of the Spanish Criminal Code. This case appeared before the Supreme Court as a consequence of a ruling issued by the Provincial Court of Zaragoza, which found a woman guilty who was begging for money holding her daughter in her arms and with his son playing next to her.

According to this ruling, the legal interest protected by this offence is the dignity of the minor who is used for the obtaining of money by begging. Otherwise, for example when the minors are with any of their parents but without begging for money, no crime is committed under Spanish criminal law.

6. **Additional Information**

Regarding the survival needs of homeless people, we have analysed the social care provided by the public institutions of Madrid responsible for their care.

Unfortunately, it seems that the biggest city of Spain in comparison with other Spanish cities is still not prepared to meet the essential needs of homeless people. Thus, according to different organisations who work with homeless people, Madrid neither has enough professionals nor accommodation required.

In addition, care resources in Madrid are not designed to meet the current profiles and problems among homeless people as the public institutions do not have a flexible timetable, which means that homeless people can have nowhere to turn at certain moments of the day. Furthermore, public soup kitchens are antiquated and overcrowded, which means that homeless people may not be served when they really need it.

Another criticism is made to the services for homeless people on the grounds of the insufficient cooperation between the institutions, in this case public or private, responsible for the care of homeless people. Apart from this disconnection among the providers of these services, there is also sometimes lack of cooperation within the same organisations, which can cause a sort of rivalry among the employees.

In conclusion, homeless services in Madrid could be improved, especially when compared to other European cities.