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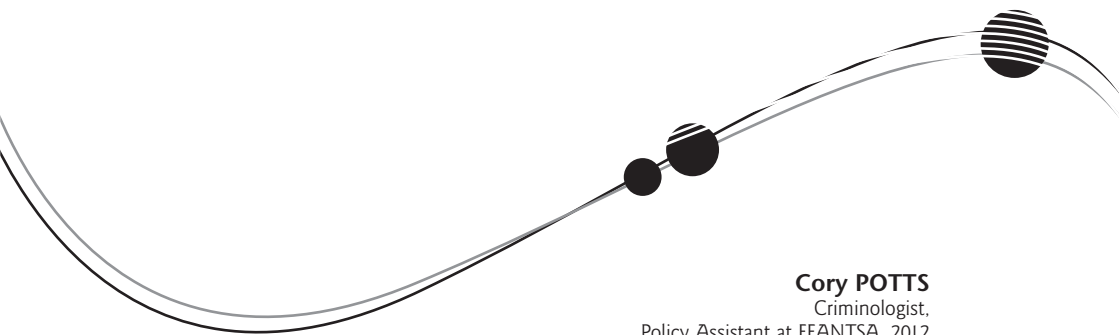
A REPORT ON THE CRIMINALISATION
OF HOMELESSNESS IN EUROPE

POVERTY IS NOT A CRIME. IT'S A SCANDAL.



CHAPTER III

Penal Visions of Homelessness and Responsibilisation in Belgium



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In Belgium, the penalisation of homeless people occurs primarily through the application of administrative sanctions, which are non-criminal disciplinary orders that impose a fine or remove a permission granted by local authorities in order to punish individuals who violate ordinances found in what are called *règlements communaux*. In this report, we focus primarily on the ordinances in the *règlements* that regulate behaviour in public spaces. We argue that using sanctions to govern bad behaviour tends to decentralise penal mechanisms while at the same time intensifying the kinds of measures imposed on rule violators. In Belgium, this movement towards localisation and intensification has been best characterized by the New Communal Law (NCL), which was adopted in 1999. Article 119bis of the NCL gives local authorities the power to create rules governing behaviour in public and to punish bad behaviour with administrative sanctions.¹ Application of these administrative sanctions represents the primary means through which the penal apparatus controls the presence and the behaviour of homeless people in public spaces in Belgium. Their use reveals how the treatment of homeless people in Belgium has become, 1) primarily the responsibility of local authorities and 2) an issue submitted, without much hesitation on the part of local authorities, to penal regulation.

LOCAL VARIATIONS AND LOCAL DISCRETION: THE MOVE TOWARDS THE REGULATION OF BEGGING THROUGH ADMINISTRATIVE SANCTIONS

The regulation of begging in Belgian cities illustrates how local authorities have used administrative sanctions to control and punish beggars while at the same time respecting a 1993 law that decriminalised begging. Since 1999 in Liège, for example, a town in the Walloon region on Belgium's eastern border, local ordinances have limited the practice of begging to certain zones and during set hours. Beggars

1. The law of 15 May 1999 created a new article, 119bis in the New Municipal Law, which gives Municipal Councils the authority to punish individuals who violate local rules and regulations with fines. The 1999 law provided that these fines could not apply to behavior already punished by penal laws or other regulations. However, the law of 17 June 2004 extends the sanctioning power of Municipalities by making punishable by administrative sanction all petty crimes or contraventions listed in book II, title X of the Belgian Penal Code in addition to a handful of other more serious infractions, or délits, listed by number in the April 2005 law. Cf. <http://www.avcb-vsgb.be/fr/Publications/nouvelle-loi-communale/texte-coordonne/attributions-art-117-142.html>

are forced to stagger their presence in the city since the zones where begging is permitted rotate throughout the week. The law allows local security officials police officers or security agents to disperse beggars and force them to circulate in the city.² The City of Liège hardened its ordinances by adopting, in May 2012, a rule that allows police to arrest habitual beggars.³ In Charleroi, a town on Belgium's southern border, lawmakers have used the NCL to introduce nuanced restrictions on begging, such that the city's *règlement* forbids begging in narrow passageways less than five meters across, in tunnels and on bridges.⁴ Finally, in Etterbeek, a district (commune) located in the Brussels-Capital region, an ordinance created in May 2012 inspired by the measures taken in Liège against begging prohibits begging in front of stores while also prohibiting more than four beggars to gather on certain commercial streets.⁵

In addition to restrictions on begging, towns that have decided *not* to introduce restrictions on beggars also demonstrate how the regulation of behaviour in public has become decentralised through the NCL. In Namur, for example, a town neighbouring Charleroi, there is no ordinance that specifically mentions begging. What these examples reveal is a regulatory patchwork in which local lawmakers are given a wide margin of discretion to adopt ordinances governing bad/antisocial behaviour. The penal rationale behind the movement to localise is clear: instead of treating homelessness as a social phenomenon caused by factors that exist at regional or national levels, the NCL institutes a practice that allows local authorities to create specific rules responding to specific problems. In this way, ordinances view homelessness as a problem among individuals who must be sanctioned in order to correct for bad behaviour, like begging.

Local ordinances apply the same rationale to a wide range of behaviours in addition to begging. Even though the ordinances do not explicitly mention homelessness, they clearly target behaviour associated with homelessness. Phillip De Craene, speaking for the Daklozen Aktie Komitee, has observed on this point that in Antwerp, "the homeless are being charged with committing infractions under ordinances

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2. According to Liège's communal ordinances, "Règlements Communaux de la Ville de Liège" published in July 2011: "Art. 3: begging is permitted between 8:00AM and 5:00PM from Monday through Friday and from 7:00AM until noon on Saturday. Art. 4 § 1: no more than two beggars are authorized to be in the same place at the same time. §2 No more than four beggars are authorized to be in the arterial road or to be in the same place at the same time. Art. 5 §1: it is forbidden for beggars to block access to public spaces, to businesses or to private domiciles. §2 It is forbidden to beg in street intersections. Art. 6: in order to permit passersby to decide whether or not to give alms, beggars may not solicit passersby nor hold a bowl or a similar accessory. Art. 7: it is forbidden to beg in the company of a minor of less than 16 years old. Art. 8: beggars may not be accompanied by an aggressive animal or an animal at risk of becoming aggressive" (*our translation*).
 3. The procedure leading towards an arrest works according to a series of sanctions that increase in severity, beginning with an official warning issued to the beggar accompanied by a copy of the communal regulations. A second infraction results in a subpoena being issued as well as an intervention by a social worker. A third infraction is considered as a menace to public order and may result in arrest.
 4. Cf "Le règlement de police de Charleroi de 2005, modifié en 2009" which contains 10 procedures concerning begging.
 5. It is surprising to hear Etterbeek's bourgmestre announce in the press, on the subject of begging, that the ordinance concerns only "people who are drunk, who insist on receiving something, people accompanied by aggressive dogs or people who stand near you when you take money out of an ATM" (*La Libre*), even though these specific behaviours are already prohibited by local police ordinances.

that prohibit non-authorized public gatherings, finding themselves responsible for many fines. Sometimes for thousands of euros. They want to chase the homeless from the city” (Warsztacki 2012, *our translation*). By permitting local authorities to regulate “nuisances” without specifying behaviour that constitutes a nuisance, districts and towns (*communes*) are permitted to apply sanctions to behaviour that local lawmakers subjectively consider offensive. For Meershaut *et al.*, the novelty of administrative sanctions exists primarily in the fact that the application of sanctions has ended a previous culture of tolerance.

LOCALISATION AS A PHENOMENON OF RESPONSABILISATION – THE HISTORICAL ORIGINS OF THE PENALISING RATIONALE

If we step away briefly from local regulations, we can put the localisation of penal measures into a theoretical context in order to explain the evolution of a penalising rationale over the last 40 years in Belgium. This rationale is characterised by the premise that the penal system is capable of responding to all social problems, a *prétention à l’aide* as Philippe Mary and Dominique De Fraene describe the rationale in their essay on community sanctions (1997, 43). According to this pretence, the penal system in Belgium acts as if the solution to any conflict exists as a legal solution, primarily in the form of a legal sanction. Although an inherent optimism underlies the premise individuals can improve! the premise lies in the penal system’s belief that it can resolve conflicts by correcting individual behaviour.

So, homelessness is seen as a social failure that the penal system must correct not through the immediate intervention of the full force of the law, but through the application of an expanding number of measures, sanctions, treatments, services, agents and procedures.⁶ In this way, local ordinances in Belgium will not mention “homelessness”, a social phenomenon, but will sanction behaviour stemming from the condition of being homeless. Another way of explaining this treatment of homelessness in Belgium is to point out that the same sanctions that target the manifestations of homelessness also target minor penal infractions, such as petty theft or graffiti. In either case, lawmakers are not calling for an intervention with the full force of the law. Instead, lawmakers use administrative sanctions to seize an opportunity for correction, which the penal system achieves by imposing a process of *responsabilisation*.

At this point we are no longer talking, as above, about the penalisation of homelessness through the perspective of local ordinances that would restore social order through restricting bad behaviour. This is to say, we are approaching the

6. This characterization leaves out the inherent complexity of every legal system, but especially Belgium’s: the country incorporates linguistic divisions, economic inequalities separating its northern and southern regions, as well as cultural and political tensions that are manifest in the struggles for local autonomy against federal power. In this context, “security” has a definite meaning, typically characterized as a “feeling of security,” as well as a political meaning, that is, “security” is the responsibility of local authorities.

penalisation of homelessness without seeing the phenomenon of penalisation as essentially the product of policies that claim to increase “security” or “public order”. At the same time, our goal is not to write security entirely out of our approach. Beginning primarily in the early 1990s, the Belgian penal system’s adoption of an insecurity approach marked a significant reconfiguration of the content, application, and logic of how the system operated (Mary, 1998, 621-23; Cartuyvels, 1996, 156-7).⁷ But while “reducing insecurity” may describe a large and growing number of practices that disproportionately target the poor and homeless people, security alone does not explain the legal mechanisms by which homelessness becomes penalised.

We can see the penalisation of homelessness in Belgium as a result of the Belgian penal system’s tendency to see social failures as penal risks. Equating social failure with penal risk followed the crisis in the Belgian social state in the 1970s, after which a series of liberalised policies adopted through the 1980s and 1990s caused the state to retreat from intervening in economic affairs while increasing the state’s claim to guarantee security. Yves Cartuyvels describes these policy developments as a movement away from positive prevention measures in favour of a penalised “non-neutral” approach to social problems (1996, 166). Philippe Mary pulls fewer punches when he characterises the same process as the invasion of Belgium’s social state by the country’s penal system (1998, 684). Mary demonstrates that since the 1980s, problems that belonged to the social sphere increasingly became problems that the penal system claimed as its own.

The decriminalisation of Belgium’s archaic laws prohibiting vagabondage provides a confounding example of the penal rationale invading the social realm. Begging and vagabondage were criminalized in 1891 in Belgium. The Belgian parliament repealed the 1891 law on 12 January 1993.⁸ In addition to decriminalising vagabondage and begging, the January 1993 law also created “social integration” contracts designed to integrate/push individuals experiencing social exclusion into work, which includes homeless people. For Mejed Hamzaoui, the 1993 law represented a historical shift in how the Belgian state dispersed social aid: instead of providing aid to individuals on the right to work, the January 1993 law made individuals responsible for seeking employment in order to become eligible for social aid (2012, 23).⁹ For homeless people, making aide contingent on demonstrating responsible social behaviour—

7. “Security” became a political and penal priority in Belgium following a period of urban rioting in the Brussels region in May 1991, which elicited, in the November 1991 municipal elections, a surprising number of victories by candidates representing the far right Flemish *Vlaamse Blok* party whose “security platform”, which focused on immigration, youth delinquency and drug addiction, was reproduced in a January 1992 text by Melechoir Wathelet, called “Pari d’une nouvelle citoyenneté” (“Wager for a new citizenship”).

8. The 12 January 1993 law “containing an urgent programme for more solidarity in society” (*contenant un programme d’urgence pour une société plus solidaire*), which decriminalized vagabondage and begging was integrated into a 26 May 2002 law, “concerning the right to social integration” (*concernant le droit à l’intégration sociale*)

9. “These activation measures were inscribed in a framework of opposition to social rights, which served to progressively push the principle of the right to work for all guaranteed by society towards the principle that individuals are responsible for finding work with assistance” (*my translation*).

that is, seeking and maintaining employment--replaced a criminal responsibility with a social responsibility.

Yet by throwing penalisation out the window, the 1993 law let a penalising rationale in through the front door. This penal logic legalised the practice of distinguishing between worthy and unworthy recipients of social aide while at the same time presenting social exclusion as the fault of irresponsible individuals. Following this line of thinking, the penal rationale justifies targeting the irresponsible individual whose refusal to adapt to social norms is seen as a risk. David Garland, describing the history of "penal welfarism" in England, explains how contact between the penal rationale and social institutions forms a continuum that presents social problems as essentially problems of discipline (1981, 35). Following Garland, Mary traces the adoption of penal welfarism in Belgium through the construction of a social/security state in which adhering to norms, whether penal or social, becomes an end in itself--deviating from the norms automatically means a penal sanction (2001, 44). Consequently, problems in society such as unemployment, health problems or the lack of housing--are no longer attributed to social causes but to the failure of individuals to conform to laws. Mary and De Fraene use the term *régionalisation* or fragmentation to describe the mechanism by which the penal apparatus invades the social sphere, a mechanism of responsabilisation. Fragmentation occurs when the penal system isolates risk groups while also fragmenting and localising the justice apparatus (Mary and De Fraene, 1997). Once isolated and placed under the control of a local authority, the risk factors manifested by a group become targets of penal intervention. Yet because they are isolated and fragmented, the risks are no longer social but personal, the fault of the individual at risk.¹⁰

Decriminalisation of homelessness in Belgium follows this pattern of responsabilisation. Social integration contracts were created in 1993 and made it possible to punish the non-conformity of those who refused to agree to the terms set out in the contracts. Next, in line with the government's determined programme to localise its penal apparatus in order to more effectively respond to local problems, legislators and the Minister of the Interior gave local authorities new powers to respond to crime at the local level.¹¹ These measures would be pursued through the 1990s and into 2000. As regards homeless people, the important change came, as we have said, on 13 May 1999 when the NCL gave local authorities the permission to sanction behaviour that had been decriminalised only six years prior. Put more simply, decriminalising homelessness in 1993 made it possible to target the manifestations of homelessness

10. "During the nineties, however [...] dismantling the social state was more and more remarkable for reducing social policies to questions of individual treatment and would assure that the penal became a central institution for the state such that, beyond pretensions to socialisation that the policies may have exhibited, one was able to speak of the penalisation of the social" (Mary, 1998, 686, *my translation*)

11. Melechoir Wathlet, the government's *formateur* in 1992, created local security contracts that would provide aide to municipalities to fund local penal innovations. These innovations, under the control of the commune's *bourmestre* and police chiefs, made it possible to pursue penal objectives through social projects: the contracts installed, for example, SEMJAs (*Service d'Encadrement de Mesures Juridiques Alternatives*), a service responsible for helping petty criminals execute community service orders (*Travaux d'intérêt general*).

in 1999, such as rough sleeping, public urination and loitering, with a new type of penal sanction that no longer “criminalised” homelessness but instead, penalised its manifestations. Indeed, the penal nature of the NCL is visible in the text. Chapter IV(2) notes, for example, that municipalities “are responsible for providing inhabitants with the advantages that come from excellent police, especially in terms of propriety, cleanliness, security and peace in roads, public buildings and public places” (*our translation*) without acknowledging the right of inhabitants to access social services or housing.

We’ve returned now to the two trends mentioned above. The first decentralises power because while the NCL’s penal rationale remains constant, the types of behaviour the municipalities choose to target, the agents employed to target the behaviour and the intensity with which it is targeted are left up to individual municipalities. The second consolidates municipal power around a fully realised penal structure that gives local authorities the power to create new rules targeting bad behaviour, assign agents to sanction that behaviour and eventually, collect fines from the sanctions. Together, the NCL decentralises the desire to punish while at the same time obscuring the means with which the sanctions are applied.

Consider, for example, the regulations enforced by the Ixelles municipality in the Brussels-Capital region. Chapter II of Ixelles’ Municipal Police Ordinance (*Règlement Général de Police d’Ixelles*) concerns propriety and hygiene in public places. Article 10 forbids urinating or defecating in public, spitting in public or discarding cigarette butts in public. Article 12 ambiguously makes it an offense to “dirty” public places, article 20 forbids bathing in public, article 23 forbids bothering neighbours with unpleasant odours and article 24 forbids camping in public for any period longer than 24 hours. Under Chapter III, which concerns public security and public passageways, Article 32 forbids all behaviour that “menaces public security” or blocks the passage of pedestrians or cars on thoroughfares while Article 34 forbids all menacing behaviour. Article 50 bans all activities that would deprive an individual’s access to a public space.¹² Clearly, the day-to-day activities of a person experiencing homelessness would eventually constitute a violation of these rules, while the ambiguity of the laws allows the police a wide margin of discretion in order to target, for example, “menacing” occupiers of public space. A study lead by Karen Meerschaut, Paul De Hert, Serge Gutwirth and Ann Vander Steene focused on this margin of discretion and found that repression has increased under the regimes of the Administrative Sanctions:

...the application of the law on administrative sanctions in the Brussels Region has shown that acts such as wearing a burqa, spitting and urinating in public, the hanging around of homeless people and caravans in public spaces, begging and playing music on public transport either suddenly appear to be punishable acts in police regulations or are

12. *Règlement Général de Police d’Ixelles*: www.elsene.irisnet.be/site/downloads/rgp.pdf.

suddenly prosecuted or are more prosecuted and fined than before the law on administrative sanctions. (2008, 4)

In addition to widening the enforcement net, Smeets notes with concern that since 1993, the overall number of security agents responsible for enforcing municipal sanctions has grown in line with their diversification to the point that their enforcement power appears to increase in inverse proportion to the clarity of their objectives (2005, 205).

These municipal regulations and the penal rationale they convey are the mechanisms that penalise poverty in Belgium today. And they provide more than just a means to reduce insecurity: administrative sanctions give voice to a penal legal system that sees in every conflict the possibility to apply an individualised sanction. That conflicts might have social solutions like increased access to housing, drug treatment programmes, or by simply providing public toilets so that homeless people are not forced to urinate in public figures only partially into this penal rationale. It is more important to maintain the possibility for a penal intervention in the case of misbehaviour by an individual.

Jeremy Waldron draws our attention towards this individualising mechanism in his famous 1991 essay on homelessness. Although Waldron does not use the term “localisation” in his essay, it is the process of localisation that renders the homeless vulnerable. And it is the process of localisation that describes the evolution of Belgium’s penal rationale since the 1970s. This localisation can be found in theory, as a principle of responsabilisation described by Mary and De Fraene, and in practice since the 1990s, when Belgium’s penal structure was fragmented and localised (Mincke *et al.*, 2012, 6).¹³

Another way of tracking the evolution of this rationale is to reach further back in history by returning to the law of 1891 that criminalised homelessness. In 2007, two Belgian legislators proposed a law that would allow police to remove vagabonds and beggars from sidewalks and transport them to a social service provider. What stands out from the law’s motivation is how the legislators deplore the criminalised past of vagabondage and begging, noting that “historically, Belgium has used, in the case of these problems, hard and fast repression,” (Document législatif n° 4-325/1, *our translation*), a history the legislators leave behind as they empower the police to force homeless people into accepting social aid. The desire for more “security” certainly supports the contradiction in this law, in which the lawmakers are able to criticise the history of criminalising homelessness while simultaneously seeking to empower the police to constrain homeless people to accept social aid; indeed, the lawmakers claim in the law’s text that homeless people are contributing to the

13. “More and more often, security policies are based on territorial units represented by neighbourhoods. Their coherence is not called into question, thus favouring a fragmented view of the city and its problems and policies to be implemented, and the phenomena resulting from the overall balance in the city escape analysis.”

rise in feelings of insecurity. Yet the rationale behind this law stretches beyond security concerns. The lawmakers neglect to mention that despite the shameful deplorable history of criminalising homelessness in Belgium, since 1925 in Brussels, police had been ordered to bring those arrested for vagabondage and begging to social service providers instead of putting them in prison (Coumans 2005, 12). That is, although vagabondage and begging were criminalised, the article suggests that police interventions in the past placed social concerns above the need to apply the law strictly. Today, as the 2007 law proposal makes clear, providing social aid to homeless people makes sense only in that it follows a police intervention. If the priority in 1925 ensured access to social aid, the priority in 2007 appears to ensure the right for police to “correct” the bad decisions made by homeless people.

Irony like the kind found in this 2007 proposal can be confounding. In line with Waldron’s 1991 article, we could explain the legislation’s apparent confusion between providing aid and repressing individuals as the product of a contradiction inherent to any liberal policy that would claim to promote the freedom of individuals while at the same time demand the right to repress bad behaviour. As troubling as the proposal may read, and as glaring as the contradictions may seem in theory, their application tells a different story. Our research found that strict enforcement of the letter of the law seldom exists. Rather, it showed that enforcement is discretionary and tends, in the Brussels region, to be a negotiation, not a foregone conclusion.

LOCAL MANAGEMENT: NEGOTIATING SPACES, ASSESSING BEHAVIOURS AND ALLOCATING SANCTIONS

If the local texts regulating public behaviour in Belgium give an image of strict enforcement, interviews with homeless people, police officers and social workers illustrate a more complex situation. These discussions both reinforced the localised character of the management of homeless people in public spaces while also exposing the particularly discretionary character of this management.

Many factors influence how local authorities apply sanctions, such as the quality of personal relationships between homeless individuals and authority figures (police officers, business owners, security guards and landlords, etc.), the amount of time a homeless person remains in a certain place, the observation of certain informal or formal rules, the nature of the place where an infraction occurs (e.g. privately owned, semi-private, or public) and the number of complaints received by community members, to name a few. These practices demonstrate the local management of the behaviour of homeless people in public spaces and its ambivalent character: while homeless people may carry out acts that are formally prohibited and not be sanctioned, police may repress other acts that are not found in local ordinances. For example, it is commonly known that police often tell homeless people to “move along” although they are not in violation of any rule—local ordinances do

not officially authorise the police to issue such a warning.¹⁴ One fact, however, stands above the rest: enforcement of administrative sanctions appears to respond closely to complaints by business owners.¹⁵ More than the physical presence of homeless people, what bothers business owners and other community members, and determines police intervention are the tracks, traces and signs that homeless people leave and which constitute “territorial offenses” (Goffman, 1973) that render their occupation of public space all the more illegitimate.

But the legitimacy of an encampment also depends on the social structure of the neighbourhood where it is located. Homeless people encounter more difficulties in certain neighbourhoods that are “territories in themselves, in the sense that the territory is a community” (Zeneidi-Henry, 2002 :163, *our translation*). Where there are dense social networks, where individuals recognise one another as members of a community and where incivilities are seen as an affront to a pre-existing order are as such no longer public in the minds of community members. Therefore, tolerating homeless people depends on the capacity of homeless people themselves to manage and maintain good relations with community members and residents who occupy the same space. The degree to which the presence of homeless people is legitimate depends on the quality of personal relationships that the homeless have with others who frequently visit the places where they are found.¹⁶

Obviously, this trend—the fact that enforcement of administrative sanctions depends on personal relationships between homeless people and security forces—also governs interactions and interventions in semi-public places. For example, the public transport authority in Brussels, the STIB, has adopted a list of rules concerning prohibited behaviour. The rules include restrictions on eating, smoking, aggressive behaviour, and restrictions on disturbing other passengers with one’s odour, one’s belongings or by one’s presence. In addition, the STIB employs its own security

14. The example recounted during one interview of a group of people who occupied for a long time the sidewalk in front of a mental health service provider provides an example of a “move along” order: at the request of the service provider, the police arrived on scene to ask the occupiers to leave the sidewalk. While a group may be tolerated for months in the same location, it’s possible that they are suddenly, and unofficially, asked to leave *en masse*. It is difficult to measure the frequency with which police revert to this type of order and what factors impose that the police decide to remove individuals from a place where they had otherwise been tolerated.

15. For example, in Etterbeek, the recent ban against begging in commercial zones responded to a high number of complaints about the homeless that originated from the same zones. Interviews with police officers that took place before the ban went into effect revealed the extent to which the officers are caught in an awkward position between competing demands, which are the desire to help and the desire to drive them out. Because begging was never formally outlawed, officers could not respond directly to the complaints of storekeepers, who preferred to see the homeless removed entirely. There was no framework in which the police could operate, that responded directly to the storekeeper demands that motivate their intervention. The police were left to “*ménager la chèvre, le chou et le loup*”—in other words, to manage conflicting interests. And yet, if non-offensive begging offers few opportunities for an official police intervention, maintaining good relations in the community required the police to intervene all the same on behalf of the storekeepers.

16. The homeless sometimes enter into relations where they receive privileged access to places that are “off-limits,” such as access to hygiene facilities or access to restricted subway platforms at night during the winter.

force, which permits the agency to respond quickly to rule violations and apply sanctions. More importantly, since 2007, the STIB's regulations have included a prohibition on begging on STIB property. The agency also played announcements over the network's PA system inciting passengers to refrain from giving alms so as not to encourage begging (STIB, 2011). Yet if this array of measures suggests a willingness to impose sanctions. In fact, STIB security agents only impose sanctions on rule violators infrequently. More likely, violators are simply asked to leave STIB property.¹⁷ The practice of sanctioning then, unlike the rules governing sanctions, demonstrates a margin of tolerance that is the rule rather than an exception.¹⁸ Agents are left to decide according to their own assessment of the situation whether or not to escalate an intervention by issuing a sanction. It is a question of discretionary power in which sanctions play a role in a negotiation, played out on a case-by-base basis, between potential rule breakers and STIB agents.

CONCLUSION: LOCALISED PRACTICES AND DISCRETIONARY INTERVENTIONS, A PATCHWORK

Corresponding to the localisation of rules governing behaviour in public spaces, we find in Belgium a similar trend of decentralisation of power among authority figures, such that the application of local rules is reduced to the assessment of police officers and other security agents. As a result, it is difficult to propose a general conclusion about the rate with which homeless people are penalised in Belgium or the severity of their penalisation. The absence of reports focusing on the application of penal sanctions on homeless people by local authorities further complicates the attempts to fill in the gaps in the patchwork analysis given by this report. We may, however, return to two claims whose validity appears well established. First, the management of “problem” situations that involve homeless people (e.g. where a homeless individual is at risk of receiving a sanction)—is above all—local. Second, the agents responsible for issuing sanctions operate within a significant margin of discretion. Between these two claims, we find that while restrictions and displacements may occur frequently, if not officially, they occur alongside pacts of solidarity between agents and potential violators, a situation that leads to various zones of tolerance within communities.

Nevertheless, the trend of tolerance is threatened by numerous factors that deserve further attention. For example, the proliferation of “semi-public” places in Belgium, characterised by the limited conditions of access that these places impose, allow

17. Among other prohibited behaviors, the STIB forbids improper usage of STIB property (without defining “improper”), to spit or to publicly urinate or defecate, to obstruct a passageway, to trouble the public order or inconvenience other passengers or to be found in a state of intoxication, a state of explicit impropriety whether through undesirable physical contact or by offensive, immoral or menacing acts. Infractions are punished by fines of between 75 and 250 euros.

18. The same measure of tolerance is also found in the treatment of people sleeping overnight on STIB property. Typically, security agents pass each morning and invite campers to leave STIB property before the rush of morning commuters arrives.

general restrictions against homeless people to take place over entire swathes of land while the scope of this repression is invisible to the general public. In a similar manner, renovations of existing public places that render the spaces “defendable” — for example, installing barriers between seats on benches in STIB stations, making it impossible to lie down expose a more insidious practice of rendering the presence of homeless people in public uncomfortable and impossible without any human oversight. In this way, penalising practices are becoming a feature of the geography of public spaces. Also in public spaces, enforcement of municipal ordinances appears to be increasing in severity. Pascal Debruyne, a geography researcher from the University of Ghent, has put together a petition that points out increases in the use of municipal sanctions in towns in Flanders (“Interstedelijke coalitie voor ‘het recht op de stad’”).

Overall, we may expect regulations in Belgium to become more and more explicit as guidelines that target homeless people and other socially marginalised populations. In its May 2012 newsletter, The *Front commun des SDFs* (Common Front of Homeless People) highlighted a sweeping strategy that police were using in the city of Liège. The strategy relied on the enforcement of municipal sanctions concerning trash to sweep Liège’s homeless dwellers all in one night (“A Liège, être sdf ou mancheur deviendra bientôt un crime” 4). Finally, in the Brussels Capital Region in 2009, the *Ligue des Droits de l’Homme* (The League for Human Rights) condemned the transit system, the STIB, for its decision to ban begging on STIB property (“STIB : stop à la chasse aux mendiants!”). In the years to come, it seems—perhaps—that the enforcement of municipal sanctions will catch up to the threat posed by the sanctions in the abstract.

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MEAN STREETS

A REPORT ON THE CRIMINALISATION
OF HOMELESSNESS IN EUROPE

Criminalising and penalising homeless people for carrying out life-sustaining activities in public because there is no where to go is a problem across the EU. Policies and measures, be they at local, regional or national level, that impose criminal or administrative penalties on homeless people is counterproductive public policy and often violates human rights.

Housing Rights Watch and FEANTSA have published this report to draw attention to this issue. This report brings together articles from academics, activists, lawyers and NGOs on the topic of human rights and penalisation. Divided into three main sections, the report provides an important theoretical and historical background, before highlighting examples of penalisation across the EU, and finally suggesting measures and examples on how to redress this dangerous trend.

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