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# MEAN STREETS

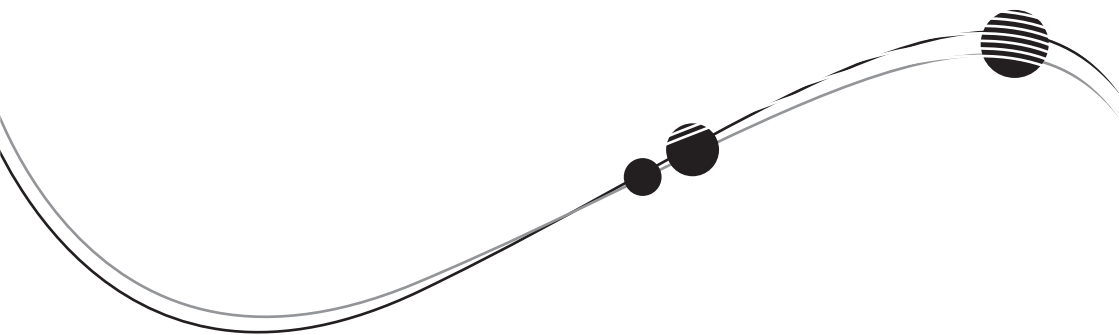
A REPORT ON THE CRIMINALISATION  
OF HOMELESSNESS IN EUROPE

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



# CHAPTER V

## The Criminalisation of Homelessness in Hungary



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The following report provides a brief overview of the antecedents and unfolding of the current punitive upsurge that led to the nation-wide criminalisation of street homelessness in Hungary. It will be argued that, whereas the Hungarian government went exceptionally far in criminalising homelessness, the enforcement of the corresponding legislation has been, up to now, limited—partially because of the widespread public criticism of these punitive measures in general, and in particular grassroots mobilisation involving homeless people. The report concludes by underlining the harm that criminalising legislation causes, regardless of whether it is actually enforced, through the exclusionary discourse accompanying it.

## ANTECEDENTS

The criminalisation of homelessness intensified, become codified and systematic since 2010. However, the current punitive surge has its antecedents both in the preceding “socialist” regime as well as the two decades following the transition to capitalism and parliamentary democracy in 1989-1990. The official propaganda of the “socialist” regime declared poverty to be non-existent in the 1950s, and prohibited sociological investigations of the problem. From the 1960s onward, full employment and comprehensive welfare provision (e.g. Ringold, 1999) indeed alleviated extreme poverty. Extensive social policies were, however, complemented with punitive measures directed against those “living an idle or alcoholic lifestyle”. According to an ordinance issued in 1985, for example, anyone found homeless in public spaces was to be arrested (Győri, 2009). Homelessness was not abolished — indeed its prevalence was estimated to be between 30,000 to 60,000 people in the 1980s (Utasi, 1987) — but punitive measures, together with state censorship of the press and academia, made much of it invisible to the public, especially in the case of rough sleeping.

With the transition to a market economy, widespread deindustrialisation, the subsequent radical increase in poverty and unemployment, the rapid increase in housing costs and shutting down nearly all the workers’ hostels led to mass homelessness in Hungary (Győri, 1990; Iványi, 1997; Mezei, 1999). At the same time, earlier criminalising measures were abolished, civil rights were formally guaranteed, and an elaborate system of homeless assistance services was developed.

The initial phase of the “post-socialist” era was characterized by informal police harassment of fluctuating intensity (depending on the season, the proximity of

local elections and the prominence of different public spaces) without any attempt to legalise this practice. From the mid 2000s, however, several local authorities criminalised “silent begging”, with important ramifications to people living on the street (regardless of whether or not they were begging). According to national legislation, panhandling with children or in a “harassing/aggressive way” was already prohibited—the latter broadly defined to include anyone “who addresses pedestrians or people in public with the purpose of asking for money”. Thus, this regulation made any form of panhandling other than silent begging (no matter how polite) illegal. Yet several local authorities — including Eger, Hajduszoboszló, Kaposvár, Nagykanizsa, Pécs, Szeged and the 13<sup>th</sup> district of Budapest — still found it necessary to criminalise non-harassing forms of begging in their downtown area, with the intention — manifested in the rationales put forward by some of the advocates of these ordinances — to push homeless people from these areas. Many of these ordinances included “implied conduct” in their definition of silent begging which is especially worrisome with respect to harassment of homeless people.

More recently, the exclusion of homeless people from public spaces was announced by various politicians, but their rhetoric was not followed by legislative measures. The mayor of the 5<sup>th</sup> district of Budapest announced the elimination of “homeless islands” (public spaces occupied by homeless people) and promised to ensure the “legal basis for pushing out the homeless and beggars”. He later backed off as a grassroots protest brought his exclusionary intentions onto the evening news. In 2009, the mayor of the 11<sup>th</sup> district of Budapest announced a policy of “zero tolerance” on homelessness and the designation of “homeless-free zones” from which homeless people would be excluded. Again, the mayor abandoned these plans when media coverage sparked grassroots homeless activism protests.

## **CHRONOLOGY OF CRIMINALISATION OF ROUGH SLEEPING**

The criminalisation of homelessness became systematic through the legislative changes after the change of government in 2010. A more punitive approach to homelessness was manifest in various announcements by the Minister of the Interior and the newly elected mayor of Budapest. The minister promised to “clear the public spaces from beggars and everyone who inconveniences the public”, whereas the mayor argued that “the purpose of the nation’s capital, including the railway stations, the underpasses, and public spaces is not to allow people who have nothing to lose to continuously molest everyone else and to make Budapest unusable”. In his election program, he also promised to “eliminate the spontaneously erected homeless settlements from green areas”.

The criminalisation of homelessness unfolded through the following four steps:

- In November 2010, the parliament passed legislation that defined the purposes of public spaces, and authorised local authorities to pass ordinances prohibiting their usage for any other activity. Notably, the official rationale for the legislation provided by the Ministry of the Interior gave only one example of such other activity: the “habitual residing of homeless people” in public spaces. Furthermore,

the official document argued that the local authorities would be able to prohibit the use of public spaces for non-designated purposes, and again, the only example provided was to “reside” or “sleep” in public spaces.

- In April 2011, the local authority of Budapest passed an ordinance that made it illegal to “use public spaces for habitually residing there” and to store belongings used for such activity (e.g. blankets, mattresses, etc.) in public spaces. The ordinance imposed a fine of up to 50,000 Forints (or 178 Euros) for such activities. Similar ordinances were later passed in the town of Tatabánya as well as in the 6<sup>th</sup> and 8<sup>th</sup> districts of Budapest.
- In November 2011, the parliament passed legislation that made it a misdemeanour, punishable with up to 60 days of imprisonment or a fine of 150,000 Forints (534 Euros) to violate any local prohibition on “residing in public spaces” twice within six months. This legislation did not extend criminalisation to the whole country, but it significantly increased the possible sanction of violating the already existing local ordinances by making repeated rough sleeping directly punishable with imprisonment. (Note that fines on the basis of local ordinances were already convertible to sentences in jail or to community service in cases of non-payment.) According to the official rationale attached to the bill, this change was required as “the monetary sanction imposed by local authorities is hard to enforce on the usual perpetrators [sic], and therefore did not have sufficient deterrent effect with respect to recidivism”. According to the law, the above sanction “should not be used if city authorities do not provide the means for assistance for the homeless”. It was not defined anywhere, however, what the required level of assistance is for the sanction to be applicable.
- In December 2011, the parliament passed a new codex of misdemeanours that made “residing in public spaces” illegal in the whole country. Making rough sleeping is punishable by fines of up to 60,000 Forints (213 Euros). After two contraventions (including earlier charges due to rough sleeping) within six months, sleeping rough is punishable with up to 60 days of imprisonment.
- ? In November 2012, Hungary’s Constitutional Court struck down this legislation as unconstitutional. However, the government rapidly responded by adding a new section to its proposed constitutional amendments that essentially allows for laws to be passed that criminalise homelessness and removes the power of the Constitutional Court to review this kind of legislation.

As early as November of 2010, the mayor of Budapest announced his “Program of Social Reconciliation”, which consisted in the expulsion of homeless people from the 12 most prominent underpasses/subways of Budapest. The original announcements included extra financial resources to provide for those 120 people who were found by homeless service providers in these locations. These resources, however, were never delivered; instead, shelters prioritised the placement of those living in the designated public spaces over other homeless people. At that point there was no legal basis for the forceful removal of homeless people from the underpasses. In February 2011, it was revealed that the Ministry of Human Resources was planning to open institutions “which are also suitable for detention, namely in which the placement of homeless persons who were not willing to voluntarily use the services [of shelters] is also possible”. In December 2011, the first homeless shelter with a special room for short-term arrests was opened, though (most likely due to protests

and critical media coverage) this function was later denied by the authorities and was never put into practice.

Throughout the above process, the government received much criticism for the criminalisation of homelessness. At various stages, the criminalisation of homelessness was condemned by the Parliamentary Commissioner for Civil Rights, the most prestigious Hungarian department of social policy and social work (of the Eötvös Loránd University), the Hungarian office of Habitat for Humanity, the Catholic Community of Sant'Egidio, and the national umbrella organization of homeless service providers. The two democratic parties of the parliamentary opposition (LMP and MSZP) also argued and voted against all the criminalising legislation. In November 2011, as the culmination of a long campaign by the grassroots activist group, The City is for All, thirty protesters (including homeless people) staged a sit-in in the office of member of the parliament Máté Kocsis, the leading advocate of the punitive upsurge. In a non-violent civil disobedience undertaking, the activists refused to leave until the politician revoked the draft law about the imprisonment of homeless people repeatedly found sleeping rough. The direct action resulted in the arrest and forceful removal of activists, which increased the public's awareness about the government's plans to incarcerate homeless people.

The European Federation of National Organisations Working with the Homeless (FEANTSA) has issued several press releases on the Hungarian situation.<sup>1</sup> Leading international human rights organizations, Amnesty International<sup>2</sup> and Human Rights Watch<sup>3</sup>, also denounced the criminalisation of homelessness in Hungary. It is notable that whereas the European Union remained silent on the issue (in particular, both the Fundamental Rights Agency as well as the European Commissioner for Employment, Social Affairs and Inclusion refused to denounce publicly the punitive measures, despite several requests by Hungarian organisations to do so), two human rights experts of the United Nations took a public stance against criminalisation.<sup>4</sup>

The governing party has a large majority in the parliament as well as the continuing support of much of the electorate, and thus the aforementioned criticisms could not lead to the overt revocation of the punitive policies. Nonetheless, as it will be argued below, the widespread public criticism and grassroots mobilization among homeless people contributed to the lack of widespread aggressive enforcement of criminalising legislation.

## THE CRIMINALISATION OF SCAVENGING

Besides the criminalisation of rough sleeping summarised above, another important instance of the criminalisation of poverty is the anti-scamvenging ordinance passed

1. Please see [www.feantsa.org](http://www.feantsa.org);

2. See their 2012 country report on Hungary.

3. See <http://www.hrw.org/news/2012/04/16/hungary-revoke-law-criminalizing-homeless>

4. See <http://www.un.org/apps/news/story.asp?NewsID=41246&Cr=Rapporteur&Cr1>

by the 8<sup>th</sup> district of Budapest in the fall of 2010. According to local legislation, “taking out garbage from garbage cans placed in public spaces or jointly used by residents” is punishable with a fine of up to 50,000 Forints (or 178 Euros). The 8<sup>th</sup> district was not the first to criminalise scavenging: a petition to the Constitutional Court compiled by the Hungarian Civil Liberties Union identified 39 local ordinances that contained such regulation. As early as 2001, the Parliamentary Commissioner for the National and Ethnic Minority Rights criticised the anti-scavenging ordinance in Tiszaújváros for being unconstitutional and resulting in indirect discrimination against Roma people (who were more likely to be compelled by extreme poverty to violate the regulation). Nonetheless, it was the anti-scavenging ordinance in the 8<sup>th</sup> district of Budapest that became a public scandal, due to the fact that it was part of an aggressive anti-homeless campaign by mayor Máté Kocsis (who argued, for example, that “if we do not drive homeless people out, they will drive the residents of the 8<sup>th</sup> district out”), and to the loud opposition to the punitive measure by homeless service providers, homeless activists, and a group of radical social workers.<sup>5</sup>

In December 2011, the Constitutional Court repealed the anti-scavenging ordinance in Kaposvár. The Court argued that criminalising scavenging is unconstitutional because it restricts general freedom of action without relevant constitutional reason and violates the requirement of equal treatment because it is evidently directed against the poorest and most vulnerable members of society.<sup>6</sup> Unfortunately, this decision did not apply automatically to other local ordinances. However, in December 2011, the parliament passed legislation removing the power of local authorities to define contraventions in their ordinances, and all such ordinances—including local prohibitions on scavenging and silent begging—were repealed.<sup>7</sup>

## ILLEGAL DEMOLITION OF INFORMAL SETTLEMENTS

Besides the aforementioned legislative changes, the increasingly punitive governmental responses to homelessness have also been demonstrated in the attempts of various local authorities to demolish informal settlements of homeless people without due process nor the provision of adequate alternative accommodation. Examples from Budapest include the following:

- In October 2011, the local authority of the 14<sup>th</sup> district of Budapest demolished the self-built wooden cabins of nine homeless people. The demolition was not preceded by adequate prior notice, not approved by relevant authorities, and

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5. The opposition included a civil disobedience action in which participants of the protest were invited to publicly violate the anti-scavenging ordinance by taking out rubbish from waste containers on the street. The protest and the subsequent court case against one of the organisers of the protest received a great deal of public attention.

6. 22/2011. (III. 30.)

7. Local authorities are allowed, however, to prohibit “blatantly anti-social behaviour” in local ordinances and impose administrative fines in cases of the violation. It is yet to be seen whether some of the criminalising measures described above will be attempted to be restored in this new form.



not accompanied with provision for alternative accommodation. A report by the Parliamentary Commissioner for Civil Rights later found that this measure was arbitrary and without authorisation, and the homeless people concerned -- with the help of the Legal Defence Bureau for National and Ethnic Minorities and The City is for All -- sued the local authority for compensation.

- In December 2011, the local authority of the 21<sup>st</sup> district of Budapest was planning the eviction of approximately thirty homeless people from their self-built wooden shanties in an otherwise largely abandoned green area. Again, requirements of due process were not fulfilled, which would have made the action illegal. Here, grassroots mobilisation and the subsequent early media coverage prevented the implementation of these plans, and there are ongoing negotiations between the homeless people concerned and the authorities on possible solutions.
- In March 2012, seven homeless people were forcefully evicted and their self-built shacks demolished by the local authority of the 9<sup>th</sup> district of Budapest. These measures, as elsewhere, were illegal as the local authority did not seek court approval. Moreover, those evicted were not officially given prior notice, and many of their belongings were taken and disposed of. Two activists who tried non-violently to prevent the illegal measure -- including the author of this report -- were hand-cuffed and arrested. Later, the corresponding report of the Parliamentary Commissioner for Civil Rights declared once again that such unauthorised demolition of homeless settlements is unacceptable (AJB-3513/2012).
- In June 2012, an informal settlement of around 50 homeless people in a wooded area of the 10<sup>th</sup> district of Budapest was threatened by illegal demolition. The corresponding decision was made by the committee of public order of the city council (which is not authorized to approve such measures), the residents of the settlement were not given any written notice, and outreach workers were given only two weeks by the local authority to find accommodation for those now displaced. In this case, grassroots mobilisation by homeless activists was again able to prevent the forced evictions, and there are ongoing negotiations with the local authority on possible solutions.

In all of these cases, there is an important discrepancy between the kind of accommodation the authorities tend to be able or willing to provide without consistent additional pressure -- temporary placement in over-crowded shelters -- and the quality of the accommodation that the affected homeless people provide for themselves, in terms of independence, privacy, and permanence. The prevalence of such informal settlements is an important reminder of the inadequacies of both the homeless shelters and municipal housing provision.

Note also that whereas these measures fit into the government's increasingly punitive approach to homelessness, they are not directly related to the enacted criminalising legislation. The misdemeanour of residing in public spaces was never explicitly invoked by the authorities in these cases.

## INTENSITY OF ENFORCEMENT AND POLICE HARASSMENT IN BUDAPEST

There is only fragmented and indicative information available about the prevalence of the actual enforcement of criminalising measures. According to the data gathered by the Hungarian Civil Liberties Union, the anti-scavenging ordinance in the 8<sup>th</sup> district of Budapest led to documented law enforcement 184 times throughout 2011<sup>8</sup>. The vast majority of the cases consisted of the issuance of a formal warning; people were fined in 11 cases, ranging from 5,000 Forints to 25,000 Forints (or 18 to 89 Euros). From the data provided by the local authorities of most of the districts in Budapest, it can be calculated that, from mid May 2011 to the end of that year, at least 800 law enforcement measures were taken against rough sleeping. It is important to note that more than 600 of these occurred in the 8<sup>th</sup> district of Budapest, where the mayor announced a campaign of law enforcement specifically targeting the presence of homeless people in public spaces, and a new law enforcement office was opened for the sole purpose of handling these cases. There were no other similarly aggressive attempts to enforce the criminalisation of homelessness. Though the police harassment of homeless people did increase over those two years, this increase did not seem to be as radical as the legislative review would suggest.

Everyday experience as well as the preliminary results of an ongoing participatory research project on the discrimination against homeless people<sup>9</sup> suggest that one of the most crucial instruments of police harassment is frequent identity checks of homeless people, which is not directly related to the criminalisation of rough sleeping, and which was widespread already before the corresponding legislation entered into force. In this study of around 350 homeless people in Budapest, 59 percent of the respondents reported identity checks by the police within a month, and one-third of them reported more than four identity checks. Half of the respondents had been awakened by the authorities (47 percent), mostly when sleeping in a public space. In almost two-thirds of the cases (63 percent), they were awakened for identity checks, and in only a tiny minority of the cases (4 percent) were they awakened because the authorities wanted to offer help (e.g. by warning them about the cold weather). Fifty-seven percent of the respondents thought that homeless people were treated worse than others by the police in case of identity checks.

As far as the criminalisation of street homelessness, the possibility of imprisoning homeless people who are repeatedly found rough sleeping and government plans for establishing homeless shelters into which people would be brought by force, there seems to be an apparent inconsistency between government rhetoric and the actual practice of law enforcement. Besides the operational and financial constraints of the law enforcement agencies, this might also be due to the widespread public criticism of punitive measures in general and, in particular, to the powerful grassroots mobilisation of homeless people and their allies.<sup>10</sup>

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8. Data kindly provided by Stefánia Kapronczy.

9. Utca és Jog [Street and Law] participatory action research project, 2012. Data was kindly provided by Éva Tessa Udvarhelyi.

10. Anecdotal evidence also suggests that law enforcement agencies are not eager to take on the task of arresting homeless people for nothing else than their homelessness, and that they too believe that this issue should be mainly treated as a matter of social policies, not of policing.



## CONCLUSION

The criminalisation of homelessness is a matter of crucial significance in itself. Homeless people must be defended from arbitrary measures, humiliating police harassment, penal fines and incarceration just as the principle of equal worth of citizens must be defended from unconstitutional, discriminative legislation. Furthermore, the criminalisation of homelessness can have the dangerous side-effect of forcing homeless people to seek out more hidden places, where it is more difficult for the — often lifesaving — help of concerned citizens or outreach workers to reach them. However, the only end goal truly worthy of embracing by social workers, sociologists, and human rights advocates alike is not to make rough sleeping legal again, but to make it unnecessary.

Criminalisation of homelessness is gravely harmful in this respect as well. The political discourse that accompanies — and attempts to legitimise — punitive measures redefines homelessness as an issue of public order, and therefore diverts attention from the inadequacies of social policies to provide dignified housing for everyone. Punitive measures and the corresponding control of public spaces indicate “a profound change in the social construction of homelessness, which can have serious consequences on policies. Framing homelessness in terms of public order and nuisance subtracts the question of homelessness from social policies” (Tosi, 2007:229). Indeed, an important function of criminalisation is to compensate the deficit in legitimacy suffered by political leaders because of their failure to prevent extreme poverty manifest in rooflessness (Marcuse, 1988; Wacquant, 2001).

Criminalisation can only be legitimised if the public is made to believe that homeless people remain homeless by choice (Mitchell, 2003). This belief cultivates the perception of homeless people as different from the general public (they must be some kind of strange creatures that, for some unknown reason, prefer to remain outside in the cold and dirt), who are to be blamed for their own homelessness.<sup>11</sup> As the discourse of criminalisation frequently operates through the dehumanisation, blaming and symbolic exclusion of homeless people, it makes empathy as well as a sense of community and responsibility—the very preconditions of egalitarian reforms necessary to eliminate homelessness—increasingly difficult to develop (Missetics, 2010). Instead of understanding it as a problem of the community, the construction of homelessness as an issue of public order makes it seen as a threat from the outside.<sup>12</sup> It becomes understood as a problem *to* the society instead of a problem *of* the society.

Therefore, the stubborn insistence on the membership of homeless people in the community of citizens of equal worth and the defence of their basic civil rights can be an integral part of working toward the provision of right to housing for all.

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11. Outreach workers reported, for example, a perceptible deterioration of the ambulance service workers' attitudes toward homeless people since the onset of the current anti-homeless campaign.

12. Cf. Kawash, 1998. An analysis of the parliamentary discussions on the issue of criminalization reveals frequent references to the interests and rightful claims of “citizens”—a category that not only doesn't include homeless people, but is defined in opposition to them (Ámon, 2012).

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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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