



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.

The information in these reports was gathered from as many publicly available sources as available at the time they were prepared; some sections are incomplete due to the inaccessibility or lack of the required data.

Belgium

1. Introduction

There are no laws in Belgium that directly criminalise the fact of being homeless. Belgian national laws and the regulations of certain municipalities do however include provisions that may have an impact on the daily life of homeless people. Generally, the activities of homeless people (*e.g.* sleeping rough, silent begging) will not result in a penalty. Some specific activities, such as aggressive begging or disturbing public order (*e.g.* through public nuisance, drinking, night noise and vandalism) may however be penalised.

2. Criminal Offences

Neither the Belgian Penal Code of 8 June 1867 nor any other legislation provide penalties for the fact of being homeless. However, some specific offences which may be common in the context of the daily activities of homeless people may be penalised, as described further below.

Homelessness used to be a crime under the law of 27 November 1891 concerning vagrancy and begging, which specifically provided for the imprisonment of vagrants. However, this law was abolished by a law of 12 January 1993. Until 1993, vagrants and beggars could be deprived of their liberty and confined in certain special open prisons.

Further, public indecency or the insulting of (i)†a police officer or other official or (ii)†passers-by, may be punished under articles 383, 276 and 443 of the Belgian Penal Code.

1.1. *Offences directly affecting homeless people*

1.1.1. Begging

1.1.1.1. Silent begging

As a result of the abolition of the law on vagrancy and begging in 1993 (see above), begging in public places is no longer punishable. According to a

judgment of the Court of Appeal of Brussels from 2005, this includes begging with children. However, the exploitation (in any way) of beggars has been punishable since the adoption of article 433ter 2_ of the Belgian Penal Code on 10 August 2005.

1.1.1.2. Aggressive begging

Aggressive begging is a phenomenon that occurs in high-traffic areas and at busy intersections. The presence of pedestrians between vehicles may be very dangerous. Aggressive begging is therefore regarded as endangering public order. Several municipalities (*e.g. Liège*) have adopted regulations whereby begging at intersections is prohibited. The Council of State could however nullify such regulations, given that begging is not prohibited by law. In this respect, the Council of State ruled that a police regulation may only oppose begging where measures are required to maintain public order, safety, peace and health. There are on-going discussions in the Belgian Chamber of Representatives as to whether the Belgian government should prohibit begging on public roads in general. A draft bill dated 2 September 2005 proposed to prohibit aggressive begging on public roads where it obstructs or endangers traffic. This draft bill has not yet been approved in the Chamber of Representatives, but this does give an indication of how the legislative position towards aggressive begging may possibly evolve in the near future in Belgium.

1.1.2. Sleeping rough

Sleeping rough is not prohibited as such, but trespassing on someone else's property is prohibited under articles 439-441 of the Belgian Penal Code. In Belgium, squatting in private properties and buildings is not a specific criminal offence. Theft is a violation which applies only to movable property, not to property such as houses and land. However, squatting is an 'occupation without any right or title'. Therefore the owner can demand that a judge order the eviction of the squatters within 24 hours without the requirement of urgency. This is a civil (rather than a criminal) proceeding. While it is not a specified criminal offence, there are other offences which may be used to penalise squatting, such as trespass (under articles 439-441 of the Belgian Penal Code) and the destruction of fences or enclosures (under articles 545-546 of the Belgian Penal Code). Additionally, a draft bill was submitted in 2008 to criminalise squatting in buildings and extend the criminalisation of defamation of accommodation. This draft bill has not yet been passed.

1.1.3. Drinking alcohol in public

A person in a state of drunkenness in public may be penalised on the basis of the executive order law of 14 November 1939 for public drunkenness, which states that; "anyone who causes disorder, scandal in a public place or causes danger to another or to himself may be held in custody for at least two hours and a maximum of 12 hours." In addition, since early April 2005, the municipal governments have had the authority to penalise public drunkenness.

1.2. *Offences indirectly affecting the homeless*

1.2.1. Theft

Under article 463 of the Belgian Penal Code, stealing goods is considered a criminal offence. "Skipping", the practice of sifting through commercial or residential trash to

find items that have been discarded by their owners, but that may prove useful to the skipper, is considered to fall under article 463 of the Belgian Penal Code.

3. Administrative Offences

Since the introduction of the disturbance laws of 1999 and 2004, municipalities have had certain powers with respect to public nuisance and safety. For example, urination and defecation in public are considered to be disturbances of the public order. Fines may be issued for amounts up to €250, depending on the violation. Other offences which the municipalities may address are:

1.3. *Offences directly affecting homeless people*

1.4. *Offences indirectly affecting the homeless*

- 1 illegal dumping, night noise and vandalism;
- 2 nuisance or fire which make public establishments such as pubs or clubs unsafe; and
- 3 disruptive behaviour in the public domain.

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1.5. *Miscellaneous ordinances and decrees*

1.6. *Repression of offences*

1.6.1. *Sanctions*

4. *Appeals procedure*

5. National Case Law

6. International Case Law

7. Additional Information

Belgian legislation also includes laws and regulations that are intended to protect homeless people. For example, the law relating to the Public Centre of Social Welfare and article 23 of the Belgian Constitution states that: “Everyone has the right to a decent life (...)”.

The law relating to the Public Centre for Public Welfare Law provides for the assistance of a homeless person when he or she is in need of urgent medical help, moral support, payment of debts, social services or counselling. Additionally, homeless people may request that a minimal income be paid to them.

Furthermore, based on (inter alia) article 23 of the Belgian Constitution, the government provides beds or shelters where possible, especially during winter time.