

## FEANTSA's input for the call on Decriminalization of homelessness and extreme poverty

FEANTSA's input for the call on Decriminalization of homelessness and extreme poverty .....	1
Criminalisation .....	2
Focus on anti-begging measures .....	3
The Homeless Bill of Rights .....	3
Overview of laws or regulations .....	4
Hungary .....	4
Denmark.....	5
Italy .....	6
France.....	7
Spain .....	9
Sweden.....	11
United Kingdom .....	12
Poland .....	14
Romania.....	15
Covid and punitive enforcement measures during the pandemic .....	15

## Criminalisation

FEANTSA has been working against the criminalisation of homelessness since its creation. For FEANTSA it is an essential topic, and we have dedicated special resources to unveiling, denouncing, and exposing the human right violations involved.

The research of the European Observatory of Homelessness (EOH) has focused on this topic on several occasions. From a historical perspective, the European Observatory on Homelessness (EOH) affirms that coercive measures are nothing new but rather that there is a weak regulatory trend for public places (O'Sullivan, 2007) that has varied in its structure and justifications in accordance with every regulatory cycle (Baker, 2009).

The EOH produced a report on the conflicts and use of public places by homeless people (Meert *et al.*, 2006)<sup>1</sup>, which stated that governance in Europe, under the influence of neoliberal thinking, has given rise to the privatisation of public places and an increase in quasi-public places which has had a major impact on the lives and rights of homeless people, as their ability to access or stay in these places is conflictive and a threat to the development of economic activities. The summer 2007 edition of the FEANTSA Magazine was dedicated to Criminalisation of People who are Homeless.<sup>2</sup>

Furthermore, in 2012 FEANTSA/Housing Rights Watch launched and ran a European campaign, called "**Poverty is Not a Crime**", to raise awareness about the issue. As part of the campaign, FEANTSA asked pro bono lawyers to provide a snapshot of anti-social behaviour laws and how they impact the homeless in 17 EU Member States. Although not up to date, these reports can be found in our dedicated website.<sup>3</sup>

In 2013 FEANTSA published a book called "**Mean Streets: A report on the criminalisation of homelessness in Europe**",<sup>4</sup> which featured insights into the policy drivers of criminalisation, including case studies from Belgium, Hungary, Poland, and Spain, and good practice examples including using Ombuds services, legal services, and others.

When we speak of Criminalisation FEANTSA refers to the different ways in which homeless people are punished through the penalisation of their everyday activities in public spaces, administrative or legal obstacles blocking their access to basic services and rights and attempts to rid the public space of visible reminders of poverty by putting homeless people in prisons, banning them from public places and detaining and deporting migrants. Access to public space for homeless people is under threat as city authorities and some national governments impose restrictions on access for certain categories of people. However, while legislation is sometimes enacted with homeless people in mind, the homeless are infrequently the explicit target; nevertheless, the impact is disproportionately felt by homeless people because of their reliance on public space for conducting their day-to-day activities.<sup>5</sup>

---

<sup>1</sup> The changing profiles of homeless people: Conflict, rooflessness and the use of public space. November 2006:

[https://www.feantsaresearch.org/download/2006\\_conflict\\_rooflessness\\_and\\_use\\_of\\_public\\_space8353053374602533184.pdf](https://www.feantsaresearch.org/download/2006_conflict_rooflessness_and_use_of_public_space8353053374602533184.pdf)

<sup>2</sup> Homeless in Europe. [https://www.feantsa.org/download/en\\_summer07\\_criminalisation-1499627889099696060.pdf](https://www.feantsa.org/download/en_summer07_criminalisation-1499627889099696060.pdf)

<sup>3</sup> Criminalisation of homelessness <https://www.housingrightswatch.org/pge/criminalisation-homelessness-europe>

<sup>4</sup> G. Fernandez Evangelista and S. Jones (eds), *Mean Streets*, FEANTSA, Brussels, 2013  
<http://www.housingrightswatch.org/sites/default/files/Mean Streets - Full.pdf>

<sup>5</sup> For a more in-depth analysis on this see: Doherty et al. Homelessness and Exclusion. Regulating public space in European Cities:

### Focus on anti-begging measures

Criminalisation of begging has increased in the EU in the last years. Laws banning all types of begging fail to respect the commitments that Member States have signed up to regarding fundamental rights.<sup>6</sup>

The recent *Lăcătuș v. Switzerland* judgement<sup>7</sup> brought the criminalisation of begging into the headlines with the European Court on Human Rights (ECtHR) declaring that a ban on begging was violating the right to respect for private and family life. The Court based its argumentation on the vulnerability of the applicant, a young Roma woman. After this landmark case, the question arises whether this decision can have consequences for the penalisation of begging all over Europe. A recent analysis published on our website further examines the legal measures penalising begging in some countries more closely.<sup>8</sup>

In *Lăcătuș*, the European Roma Rights Centre introduced a Third-Party Intervention<sup>9</sup> where they urged the European Court of Human rights to identify anti-gypsyism as the discriminatory motivation underlying the adoption and increasing enforcement of laws criminalising begging in Europe. Legislation criminalising begging "*forms part of and perpetuates a pattern of exclusion that prevents the targets of anti-gypsyism from achieving full equality*".

At EU level, a Written question before the European Parliament denounced that Denmark had enacted a law against all types of begging. In this case, although the law targeted all beggars, it may constitute indirect discrimination by disproportionately targeting and affecting Roma people.<sup>10</sup>

### The Homeless Bill of Rights

In November 2017, FEANTSA and Fondation Abbe Pierre launched **the Homeless Bill of Rights**, a European campaign whose main goal is to encourage cities in Europe to reaffirm their commitment to respect the rights of people experiencing homelessness. The Bill<sup>11</sup> is a compilation of basic rights drawn from European and international human rights instruments specific to the situation of homeless people. Updates on the development of the Bill can be found on the FEANTSA website.<sup>12</sup> The Bill is conceived as an advocacy tool, and it has also been the subject of research article as a useful new Instrument to Protect the Rights of Homeless Persons.<sup>13</sup>

All FEANTSA members in Europe put in place services at municipal, regional or national level to support people living in poverty from having to resort to begging, sleeping, washing,

---

[https://www.researchgate.net/publication/239934314\\_Homelessness\\_and\\_Exclusion\\_Regulating\\_Public\\_Space\\_in\\_European\\_Cities](https://www.researchgate.net/publication/239934314_Homelessness_and_Exclusion_Regulating_Public_Space_in_European_Cities)  
[https://www.researchgate.net/publication/239934314\\_Homelessness\\_and\\_Exclusion\\_Regulating\\_Public\\_Space\\_in\\_European\\_Cities](https://www.researchgate.net/publication/239934314_Homelessness_and_Exclusion_Regulating_Public_Space_in_European_Cities)

<sup>6</sup> <http://www.errc.org/news/begging-bans-are-an-attack-on-freedom-of-expression-in-europe>

<sup>7</sup> *Affaire Lacatus c. Suisse* (Requête no 14065/15) <http://hudoc.echr.coe.int/eng?i=001-207377>

<sup>8</sup> Begging as a human right? – challenging the penalisation of begging in the EU in light of the recent *Lăcătuș v. Switzerland* case: <http://www.housingrightswatch.org/content/begging-human-right-%E2%80%93-challenging-penalisation-begging-eu-light-recent-l%C4%83c%C4%83tu%C5%9F-v-switzerland>

<sup>9</sup> <http://www.errc.org/cikk.php?cikk=4510>

<sup>10</sup> [http://www.europarl.europa.eu/doceo/document/E-8-2017-007376-ASW\\_EN.html](http://www.europarl.europa.eu/doceo/document/E-8-2017-007376-ASW_EN.html)

<sup>11</sup> [http://www.housingrightswatch.org/sites/default/files/Template\\_Homeless\\_Bill\\_of\\_Rights\\_EN\\_0.pdf](http://www.housingrightswatch.org/sites/default/files/Template_Homeless_Bill_of_Rights_EN_0.pdf)

<sup>12</sup> The Homeless Bill of Rights: <http://www.housingrightswatch.org/billofrights>

<sup>13</sup> A Homeless Bill of Rights as a New Instrument to Protect the Rights of Homeless Persons

[https://www.academia.edu/44979556/A\\_Homeless\\_Bill\\_of\\_Rights\\_as\\_a\\_New\\_Instrument\\_to\\_Protect\\_the\\_Rights\\_of\\_Homeless\\_Persons](https://www.academia.edu/44979556/A_Homeless_Bill_of_Rights_as_a_New_Instrument_to_Protect_the_Rights_of_Homeless_Persons)

defecating or performing other hygienic activities in public places, because they lack access to employment, social assistance, adequate housing, public showers, and toilets.<sup>14</sup>

## Overview of laws or regulations

### Hungary

The Seventh Amendment of the Fundamental Law in Hungary, which entered into force on 15<sup>th</sup> October 2018, made rough sleeping unconstitutional and generally prohibited rough sleeping in public spaces throughout the country. Administrative and criminal sanctions are foreseen in the case of infringement of the legislation, with special rules for rough sleepers.

The legislation establishes how to determine that a person is living in public space, and it describes the right of the municipalities to establish areas in which living in public space is forbidden. The Petty Offences Act<sup>15</sup> upheld and extended the list of offences punishable with confinement. The law allows for converting a fine or community service into confinement without a personal hearing for the offender in case the person fails to pay the fine or carry out the work. Although in some cases non-custodial sanctions are provided by law, community service and mediation are heavily underused as independent sanctions, the same applies to the conversion of fines into community service. The present legislation discriminates against the homeless by sanctioning conducts and situations that are intrinsically connected to their social status and livelihoods.

Whilst the provisions themselves are problematic, the way the procedures are carried out raises further concern. Experience to date shows that fair trial guarantees, such as the right to a lawyer, the right to be heard in person, the presumption of innocence, and the right to human dignity are often seriously violated during proceedings taken against homeless people. There has also been consistent unlawful use of handcuffs which further violates the right to a fair trial.<sup>16</sup>

FEANTSA and its members denounced the proposed amendment to the Hungarian Constitution in a public statement in June 2018.<sup>17</sup> The former Special Rapporteur on the right to adequate housing reacted as well in an open letter to the Government of Hungary denouncing infringements of international human rights.<sup>18</sup>

On 4<sup>th</sup> June 2019, the Constitutional Court of Hungary decided that the criminalization and eventual imprisonment of homeless people was in line with the 2011 Fundamental Law of Hungary.<sup>19</sup>

---

<sup>14</sup> Members can be found here: <https://www.feantsa.org/en/membership/member-map>

<sup>15</sup> Act II of 2012 on Petty Offences, the Petty Offence Procedure, and the Petty Offence Registry System

<sup>16</sup> Hungarian absurdity: Homeless people in handcuffs vs. human rights:

<https://helsinki.hu/en/hungarian-absurdity-homeless-people-in-handcuffs-vs-human-rights/>

<sup>17</sup> FEANTSA Position: FEANTSA and its members strongly denounce the proposed amendments to the Hungarian Constitution which will forbid living in a public space: <https://www.feantsa.org/en/feantsa-position/2018/06/19/feantsa-position?bcParent=27>

<sup>18</sup> OL HUN 4/2018, 20 June 2018:

[https://www.ohchr.org/Documents/Issues/Housing/OL\\_HUN\\_4\\_2018.pdf](https://www.ohchr.org/Documents/Issues/Housing/OL_HUN_4_2018.pdf)

<sup>19</sup> Chronowski Nóra & Gábor Halmai. Human Dignity for Good Hungarians Only. The Constitutional Court's Decision on the Criminalization of Homelessness: 11 June 2019

<https://verfassungsblog.de/human-dignity-for-good-hungarians-only/?fbclid=IwAR2mb4uCeicZIYBBMXNT44xckFcSTzUVfo5zEAKYMt-7-c0tX-rkLa7-Hfl>

The 2020 FEANTSA Magazine on Criminalisation dedicated a special article to analysing the situation in Hungary.<sup>20</sup>

### Denmark

In 2017 the Danish government initiated a string of repressive legal actions with the declared aim of targeting non-Danish EU-citizens on the streets of Denmark. Three pieces of legislation caused a *de facto* criminalization of rough sleepers and other vulnerable people in Denmark. These laws concerned homelessness camps, area bans and begging.

According to the Public Order Law it is now prohibited to establish and stay in camps in public places "*which are capable of creating discomfort in the neighbourhood.*" The Danish police can issue fines and area bans of 400-800 meters from the camps and even from the entire municipality to individuals staying or sleeping in the camps.<sup>21</sup>

According to Danish criminal law, begging is illegal and punishable by up to six months in prison if the person has received a warning from the police. As of 2017, the penalty for "intimidating begging" has been increased to 14 days of unconditional imprisonment for first time offenders. Furthermore, punishment is now immediate (no warning) in cases where begging is committed in pedestrian streets, train stations, at supermarkets and in public transportation.<sup>22</sup>

One of the first cases of "insecurity-creating camps" was registered in Copenhagen in 2018 but hundreds have been filed since then. A 36-year-old homeless person was convicted for sleeping on the street, in an entrance on Købmagergade in inner Copenhagen with his belongings. The court emphasised that the man had arranged a sleeping area with, among other things, blankets, for 14 days across a period of three weeks. In addition, he kept his belongings on site, ate food there and a few times, where he did not have access to toilet facilities, used the area for this purpose. The man was fined DKK 500. You can find more information about this case in the Danish press<sup>23</sup> and by reading the Court Decision.<sup>24</sup>

In November 2021, a decision by the Eastern High Court sentenced a 64-year-old Romanian man of Roma origin to unconditional imprisonment for 20 days for begging on the shopping street Strøget in Copenhagen. He had previously received a warning and a suspended prison sentence for shaking a cardboard mug at passers-by in the Copenhagen shopping street.<sup>25</sup>

There is disproportionate representation of non-Danish EU-citizens among the people charged with camping. It has been made clear from politicians that non-Danes are the target group of the police, to the point where Danish politicians have openly apologised for "*not being able to discriminate EU-citizens*".

---

<sup>20</sup> Szegös, D. Housing instead of handcuffs, the fight against the criminalisation of homeless people in Hungary, FEANTSA Magazine 2020, (accessed 29 October 2021)

[https://www.feantsa.org/public/user/Resources/magazine/2020/Housing\\_instead\\_of\\_handcuffs\\_-\\_the\\_fight\\_against\\_the\\_criminalisation\\_of\\_homeless\\_people\\_in\\_hungary-Homeless\\_in\\_Europe\\_Magazine\\_Spring2020\\_Criminalisation\\_of\\_homelessness-8.pdf](https://www.feantsa.org/public/user/Resources/magazine/2020/Housing_instead_of_handcuffs_-_the_fight_against_the_criminalisation_of_homeless_people_in_hungary-Homeless_in_Europe_Magazine_Spring2020_Criminalisation_of_homelessness-8.pdf)

<sup>21</sup> Danish Public Order, article 3(4) and 6(3).

<sup>22</sup> Danish Criminal Law, article 197. <https://www.retsinformation.dk/eli/lta/2020/1650>

<sup>23</sup> <https://www.dr.dk/nyheder/indland/foerste-sag-om-utryghedsskabende-lejr-hjemloes-doemt-sove-paa-gaden>

<sup>24</sup>

<http://www.domstol.dk/KobenhavnsByret/nyheder/domsresumeer/Pages/Ordensbekendtg%C3%B8relsen-utryghedsskabendelejr.aspx>

<sup>25</sup> <https://www.dr.dk/nyheder/seneste/mand-kendes-skyldig-i-tiggeri-paa-stroegget-i-koebenhavn>

## Italy

What follows was part of a presentation given by Giulia Gallizioli, *Avvocato di Strada Onlus*, for a FEANTSA workshop at our annual conference in Berlin in 2018.<sup>26</sup>

In the Italian legal system, begging has not been a crime since 1999, but it can give rise to administrative sanctions, and as such it is regulated by the Municipality represented by the mayor. Begging is subsumed in other crimes such as enslavement and when it involves minors or animals.

### Measures at national level

Law 18 April 2017, n. 48, called Decreto Minniti, introduced emergency measures in order to reinforce safety and to “ensure decorum” in urban centres.

By protecting “urban safety” the law aims at making life in cities more liveable: it provides for measures of urban, social and cultural renewal. At the same time, it creates a new tool of repression (called “Daspo urbano”). It consists of an order to abandon public places where there is a consistent flow of people or tourists, such as train stations, airports, but also museums and public gardens. It is addressed to those who remain in these places and by doing so impede or disturb their use by the public. The law doesn’t specifically mention homeless people (which would be unconstitutional), but the homeless are most affected by its provisions. The Daspo can take two forms: a short one and a long one. The first is competence of the mayor, the order lasts 48 hours and establishes a sanction of a minimum of €100 up to €300. If the order is not respected, the sanction is doubled. The second one is competence of the Questore, a high police commissioner, and it can last up to 6 months in case of multiple violations, or up to two years if the person has already been convicted in the previous five years.

Despite the generality of the aims pursued by the law, including the fact that it is supposed to be a tool of renewal and regeneration, municipalities have used it only in a repressive manner. For example, in Bologna this measure was used against a group of Roma people that was sleeping under the porches of a street nearby the station.

### Measures at local level

Mayors and other high representatives of the public administration can also issue so called “*ordinanze contingibili e urgenti*” which are temporary administrative orders that are supposed to be used in case of emergencies. However, in the last years many Italian Mayors have used these ordinanze to prohibit people from begging and sleeping on benches or even just from sitting on the street. In some cases, these decrees sanctioned those who distributed food or other goods to homeless people.

In particular, in 2015, near Bologna, in a small municipality called Molinella the Mayor issued a decree which prohibited people to “*beg in any form, in any public place such as churches, hospitals, train stations, institutions that provide social and emergency services, markets, parks, cemeteries, parking lots etc...*”.

Avvocato di strada Onlus successfully appealed this provision in front of the President of the Italian Republic because there was no emergency nor imminent or grave danger for the safety of the city. There was no final date to the decree, which is meant to be a temporary

---

<sup>26</sup> Spaces & Criminalization [https://www.feantsa.org/download/2018-programme\\_en\\_final3332411996428896085.pdf](https://www.feantsa.org/download/2018-programme_en_final3332411996428896085.pdf)

one. It exceeded the power limits set by the law since it established a general prohibition to begging. On this matter there had already been a judgement of Corte di Cassazione (Supreme Court), which established that begging and asking for help is an individual right and as such it cannot be prohibited. Following this decision, the Italian Parliament abolished the crime of begging in 1999.

## France

*The following is an extract from an article in 2020: "How can it be that "anti-poor" orders still exist in France?" by Noria Derdek, Research officer, Fondation Abbé Pierre, France.<sup>27</sup>*

In France, the offences of "vagrancy" and "begging" were abolished in 1994. The punishment of people experiencing poverty and exclusion, however, continue today. One aspect of this is that, at the beginning of this century, law makers rushed to create new offences (through two national security laws in 2003 and 2011).

Begging is a crime if it is done aggressively or using a dangerous animal to threaten, or if it implicates children (subsumed under the offence of neglect). The law also punishes unauthorised collective occupation of land with the intention of setting up residence there, occupation of building foyers and unauthorised street trading. The other side of this is that an alternative means of criminalisation has developed out of mayors' administrative police powers, that some of them use to set down by-laws to prohibit begging, but also other behaviours such as:

- Improper and prolonged occupation of public space, in a seated or lying position, with or without appealing to passers-by, with or without the presence of dogs/animals.
- Asking or appealing to passers-by with the intention of receiving a donation from them on public thoroughfares and in public spaces (squares, markets, parks, gardens, near outdoor seating areas, traffic lights, cathedrals).
- Going through bins, foraging, pitching a tent.
- The consumption of alcoholic beverages in places other than seating areas outside bars and restaurants.
- Groups of dogs, even if they are on a lead, etc.

These behaviours in themselves are not outlawed. For a by-law to be issued, in theory there must be '*the risk of serious public disorder*', it must be necessary to ban the behaviour and the measure must be proportional to the threat. The ban must also be limited to specific times (time of year, times of day) and places (streets, districts), it cannot be general and absolute (covering the whole town, all year round, 24 hours a day). Fines can reach €38. In train stations, this amount rises to €135 (with potential increases up to €750). This is all overseen by an administrative court judge.

It follows that "*freedom is the rule, police enforcement is the exception to the rule*". This means the freedom to roam, including the freedom to move around, to park or wait on and use public highways. Although the freedom to roam benefits everyone, "anti-poor" orders are only introduced so as not to interfere with the movement of passers-by and residents.

---

<sup>27</sup> How can it be that "anti-poor" orders still exist? Noria Derdek

[https://www.feantsa.org/public/user/Resources/magazine/2020/How\\_Can\\_it\\_be\\_that\\_Anti-Poor\\_Orders\\_Still\\_exist\\_-\\_Homeless\\_in\\_Europe\\_Magazine\\_Spring2020\\_Criminalisation\\_of\\_homelessness-7.pdf](https://www.feantsa.org/public/user/Resources/magazine/2020/How_Can_it_be_that_Anti-Poor_Orders_Still_exist_-_Homeless_in_Europe_Magazine_Spring2020_Criminalisation_of_homelessness-7.pdf)

Indeed, the presence of crowds in summer and in tourist towns is cited as a risk factor.

An analysis of the case law carried out by the Jurislogement network<sup>28</sup> showed that most municipal by-laws are established with the aim of moving rough sleepers away from certain streets, even whole areas of a town, usually those that are central, touristy, affluent, etc. We can also see that the case law on repealing these by-laws is shaky. Administrative court judges do not always rigorously check whether, in restricting rights and freedoms, these “anti-poor” orders infringe on these rights and freedoms, nor do they subject the reasons justifying them to thorough scrutiny. This is, for example, what happened in Nice, when, on 25<sup>th</sup> July 2019, to reject the motion that had been made to urgently suspend the application of the anti-begging order, all the administrative court judge did was to repeat the provisions of the order, as if the order was a justification for its existence. However, the 191 penalty notice tickets, statements and residents’ letters put forward by the mayor as evidence in this case were not a real justification for the order: only a fraction of these mentioned public disorder caused by aggressive begging or occupying public space (even then, what was meant by the behaviour referred to was not made clear) and the majority made reference to events that took place after the introduction of the order. Almost all the extracts from the statements used stereotyped allusions to “homeless begging”, without showing that any kind of public disorder or prohibited behaviour had occurred

### **Challenging these ordinances**

The *Ligue des Droits de l’Homme* have recently lodged an appeal with the Council of State, regarding an order made in 2016 by the mayor of Saint-Etienne.<sup>29</sup> This is an opportunity to have the Council make a decision on the type of scrutiny to which administrative court judges must subject “anti-poor” orders and to make it compulsory to carry out a proper proportionality test. A case in point is the fact that two appeals courts have made very different decisions. The Lyon appeals court, which hears cases from Saint-Etienne, blithely accepted that the mayor did not ban certain activities out of principle, just chose to influence the way they are carried out so as to avoid public disorder. So long as there is no disorder, there are no problems. The order was made preventatively.

Conversely, the Bordeaux appeals court expects much more of the mayor. The order must detail the exact circumstances under which this type of behaviour would constitute a problem. The mayor must bring proof of a risk to public order using specific examples and this risk must also be high enough to justify the setting down of an order that restricts fundamental freedoms. The penalty criteria must not be arbitrary. But we know that, in this case, the Saint-Etienne order bans the principle of begging without even associating it with public disorder. It also bans, for example, groups of more than two dogs lying down on public thoroughfares (without dangerousness criteria) or groups of more than three people on public thoroughfares “causing direct nuisance by the audible playing of music or speaking in loud voices” (where one person can be louder than ten). What is more, the order covers a wide geographical area (203 streets) and applies at any time, any day of the week.

---

<sup>28</sup> “Anti-begging” decrees. As part of the “Poverty is not a crime” campaign run by Housing Rights Watch, the Jurislogement network tried to decipher the legal aspects of the issue. Jurislogement. 2012: <https://www.jurislogement.org/les-arretes-ganti-mendiciteq/>

<sup>29</sup> As the Council of State is the highest administrative body in France, and so is involved after the administrative courts and the appeals courts, several years can go by before it makes a ruling on a legal matter.



Clearly, the requirements of the Bordeaux appeals court are preferable to the leniency of the Lyon appeals court as regards these “anti-poor” orders, and we hope the Council of State decision favours the former practice. It is only through thorough scrutiny by judges that we will make progress in the fight against the criminalisation of homeless people and poor people using public space.

### **Criminalization of help**

In addition to sanctions for begging and other sanctions that pursue the same logic of banning help activities for 'categories' of people in precarious situations, we have recently seen the appearance of various forms of sanctions against those who support vulnerable people (while this often targets people of foreign nationality, the legal texts are usually of a general nature, without mentioning a particular public). This shift is quite worrying and has included:

- Sanctioning of associations and individuals providing food aid on the street (known in Calais, but which has actually spread to areas where there are camps/slums).<sup>30</sup>  
<sup>31 32</sup>
- In accommodation centres, financial sanctions have also been developed for associations that do not comply with state orders to return people to the streets (this is known as “budgetary undermining”: the state withdraws part of the subsidies on the grounds that the association has not achieved its objectives, which is provided for in the legal texts.)
- The “offence of solidarity”, again more targeted at people who help foreigners, but which is in the same logic.<sup>33 34</sup>
- A recent law that has raised questions and concerns because it plans to strengthen the obligations and penalties for associations in a very vague manner.<sup>35</sup>

### **Spain**

In Spain, some municipal and provincial ordinances and bylaws hinder the development of social awareness around the issue of homelessness. These ordinances are used as an instrument of social exclusion: the administrative regulation that sets the rights of the general population directly affects the homeless. Specifically, it prohibits the fulfilment of basic needs of people who do not have a home.

As a result of the collaboration between the Caritas Española Advocacy team and the Pontificia Comillas University's Icade Legal Clinic (2015-16 academic year), a joint study was carried out, entitled: “Criminalisation of poverty in administrative law for the enemy: analysis of municipal by-laws concerning coexistence”. This study examined Organic Law 4/2015, of 30 March, concerning the protection of public safety (LOPSC), better known as the *ley*

---

<sup>30</sup><https://www.conseil-etat.fr/actualites/actualites/le-juge-des-referes-refuse-de-suspendre-en-urgence-l-interdiction-de-la-distribution-de-repas-aux-migrants-dans-le-centre-ville-de-calais>

<sup>31</sup><https://france3-regions.francetvinfo.fr/hauts-de-france/pas-calais/calais/migrants-mais-quelle-honte-les-associations-denoncent-l-interdiction-de-distribuer-eau-et-nourriture-a-calais-2194591.html>

<sup>32</sup> <https://www.infomigrants.net/fr/post/17902/la-mairie-de-paris-veut-encadrer-les-distributions-alimentaires>

<sup>33</sup> <https://www.amnesty.fr/focus/delit-de-solidarite>

<sup>34</sup> <https://www.vie-publique.fr/eclairage/18715-du-delit-de-solidarite-au-principe-de-fraternite-lois-et-controverses>

<sup>35</sup> <https://www.associationmodeemploi.fr/article/cette-loi-qui-seme-le-trouble-parmi-les-associations.72459>

*mordaza*<sup>36</sup>, and the standard by-law of the Spanish Federation of Municipalities and Provinces (FEMP).<sup>37</sup>

### **The LOPSC's impact on the criminalisation of homelessness**

Since the first draft, the law received several criticisms from human rights defenders, associations, social movements and even the United Nations. The main criticism was based on the infringement of fundamental legal principles, especially concerning legal protection and proportionality. The law contains an abundance of indeterminate legal concepts, which leads to a significant legal insecurity directly affecting the public and, especially, people living in poverty. On the other hand, the penalties associated with some activities are completely exorbitant and disproportionate. The framework set out in the regulation for imposing fines (the typical penalty in administrative legislation and also, therefore, in the LOPSC) range from €100 to €600 for minor offences, from €601 to €30,000 for serious offences and from €30,001 to €600,000 for very serious offences.<sup>38</sup>

In 2021, the coalition government have reached an agreement to partially repeal the act. Fines that are considered excessive will be reduced and proportionality criteria will be applied, adjusted to the earning capacity and age of the offenders.<sup>39</sup> The law is still in parliamentary procedure.

### **The standard FEMP by-law**

The importance of this by-law lies in the fact that it constitutes a guideline that will be followed by a majority of city and town councils, as it forms a basis for developing their own by-laws adapted to each municipality's specific circumstances and characteristics.

The Ordinance on Security and Citizen Coexistence of the Spanish Federation of Municipalities and Provinces ("FEMP" in Spanish)<sup>40</sup> included two chapters that are relevant: "Improper use of public space" and "Physiological needs". The first chapter begins by stating that *"It is forbidden to make improper use of public spaces and their elements, in a way that prevents or hinders their use or enjoyment by the rest of the users."*

Among improper uses, it is expressly stated that the following are not allowed: "Sleeping day or night in public spaces"; "the use of public benches and seats for uses other than those for which they are intended"; "washing or bathing in fountains, ponds or the like"; and "to wash clothes in fountains, ponds, showers or the like." All these behaviours are considered a minor offense, punishable with a fine of up to 500 euros. It also establishes that, in all these cases,

---

<sup>36</sup> Better known as 'gagging law'

<sup>37</sup> Sonia Olea Ferreras, Guillem Fernández Evangelista Public places and the criminalisation of homelessness from a human rights perspective, in Barcelona Societat 22: [https://ajuntament.barcelona.cat/dretssocials/sites/default/files/revista-ingles/04\\_olea-profundidad-22-eng.pdf](https://ajuntament.barcelona.cat/dretssocials/sites/default/files/revista-ingles/04_olea-profundidad-22-eng.pdf)

Spanish version: <https://ajuntament.barcelona.cat/dretssocials/sites/default/files/revista-castellano/revista-barcelona-societat-22-cast.pdf>

<sup>38</sup> Olea and Fernandez (see previous foot reference)

<sup>39</sup> <https://www.europapress.es/epsocial/migracion/noticia-unidas-podemos-psoe-cierran-acuerdo-derogar-ley-mordaza-sacan-texto-devoluciones-caliente-20211104114538.html>

<sup>40</sup> [http://www.fempclm.es/Ordenanza-tipo-de-Seguridad-y-Convivencia-Ciudadana\\_es\\_288\\_827\\_0\\_318.html](http://www.fempclm.es/Ordenanza-tipo-de-Seguridad-y-Convivencia-Ciudadana_es_288_827_0_318.html) (January 2018)

"the authorised officers shall withdraw and intervene in a precautionary manner the materials and means used."

Finally, no sanction will be imposed when the social services adopt the appropriate measures to help these people due to health reasons, a situation that shows the impassivity of the public authorities on homelessness.

In the chapter "Physiological needs", it is forbidden to "*satisfy physiological needs, such as defecating, urinating, spitting*", a conduct that is considered a minor offense, punishable by a fine of up to 300 euros. These prohibitions and sanctions related to physiological needs are based on "the protection of public health and sanitation, the right to enjoy a clean and non-degraded public space, and respect for the generally accepted guidelines of citizen coexistence and civility".

However, the regulation is based on the idea that actions such as sleeping on the street or using benches and public seats for uses other than those for which they are intended are harmful in themselves. Even if someone slept on the street and did not dirty the public space he could be penalised for this action. All this regulation regarding the improper uses of public space and physiological needs directly affects the daily activities of homeless people.

The establishment of these prohibitions is justified, in general, in "*the guarantee of a rational and orderly use of public space and its elements*" and in "*the safeguarding of health, the protection of security and the municipal patrimony*."

FEANTSA organisations in Spain have asked of public administrations that FEMP-type ordinances be eliminated and that new versions be developed in which the rights of homeless people can also be respected and understood, as a mechanism to contribute to their non-discrimination. In addition, they demand that public administrations recognise in their legal framework the special vulnerability that homeless people have in the face of crimes based on intolerance and prejudice, considering the socioeconomic situation of poverty and exclusion as a ground for special protection. According to data from the HATento Observatory,<sup>41</sup> 47% of homeless people claim to have suffered at least one hate crime or incident and almost 25% have suffered physical attacks based on intolerance and contempt for their situation of exclusion.

## Sweden

The content for Sweden has been mainly drafted using information in a recent article: "The spread of anti-begging measures and the absence of free movement rights in Sweden," by Martin Enquist Källgren.<sup>42</sup>

The debate about banning begging in Sweden has been going on for several years. In 2011, the Swedish Democrats proposed a ban on begging to the Swedish Parliament.<sup>43</sup> In 2015 and 2016 the party made further attempts to persuade the parliament to prohibit begging, suggesting discriminatively that only foreign nationals should be prohibited from begging.<sup>44</sup> The proposals have consequently been rejected by the parliament's judicial committee,

<sup>41</sup> HATento is an initiative by Hogar SI. <http://hatento.org/>

<sup>42</sup> The spread of anti-begging measures and the absence of free movement rights in Sweden, Martin Enquist Källgren, [https://www.feantsa.org/public/user/Resources/magazine/2020/The\\_Spread\\_of\\_Anti-Begging\\_Measures\\_and\\_the\\_Absence\\_of\\_Free\\_Movement\\_Rights\\_in\\_Sweden\\_-\\_Homeless\\_in\\_Europe\\_Magazine\\_Spring2020\\_Criminalisation\\_of\\_homelessness.pdf](https://www.feantsa.org/public/user/Resources/magazine/2020/The_Spread_of_Anti-Begging_Measures_and_the_Absence_of_Free_Movement_Rights_in_Sweden_-_Homeless_in_Europe_Magazine_Spring2020_Criminalisation_of_homelessness.pdf)

<sup>43</sup> Parliament proposal: motion 2011/12: Sf344.

<sup>44</sup> Justitiekommitténs betänkande 2015/16:JuU20, p. 73 and Justitiekommitténs betänkande 2016/17:JuU18, p. 84.

who state that begging is not a criminal offence in Sweden, but also recognise that it could be possible for municipalities to prohibit begging under the Act on Public Order.<sup>45</sup> In December 2018, the Swedish Supreme Administrative Court ruled that a local begging prohibition, introduced by the municipality of Vellinge in the south of Sweden, was lawful under national law with reference to public order.<sup>46</sup> While the court's decision was a strict legal assessment of whether the local regulation was compatible with the Act on Public Order,<sup>47</sup> it must also be viewed as the judiciary's response to the ongoing debate about Sweden's responsibility for destitute EU citizens.

Following the decision from Sweden's Supreme Administrative Court, claims for implementation of anti-begging measures are now being brought to the fore by a wide range of community actors. At least ten more municipalities have implemented anti-begging measures and several municipalities are planning to adopt similar frameworks.<sup>48</sup> In addition, the leading opposition party, Moderaterna (Moderates), has now proposed to criminalise begging and requested the parliament adopt a national prohibition.<sup>49</sup> The bill was never passed.

The reasons given in favour of implementing anti-begging measures can generally be divided into three categories, or a combination of the three. Firstly, with reference to public order,<sup>50</sup> secondly, with regard to the risk for people in destitution to be subject to exploitation,<sup>51</sup> and thirdly, due to the conception that it is the member state of origin that should take responsibility for destitute EU citizens residing in Sweden.<sup>52</sup> Notwithstanding the validity of these arguments, anti-begging measures are reported to worsen the vulnerability of already destitute people. Moreover, criminalising or prohibiting the act of asking for help constitutes a serious violation of human rights.<sup>53</sup> In that respect, it is problematic that neither the Supreme Administrative Court's decision, nor any of the municipality decisions include an impact assessment as to the effectiveness of the asserted aims or a compatibility assessment with regard to human rights.<sup>54</sup>

## United Kingdom

### The Vagrancy Act

The Vagrancy Act, which goes back to 1824, is still in force in England and Wales. When enacted in 1824, this criminal statute targeted an extensive range of 'idle and disorderly' people thought to be *rogues and vagabonds*. While most of these offences have now since been repealed, the Act is still able to be used against poor people surviving on the street.

---

<sup>45</sup> Ibid p.85

<sup>46</sup> HFD 2018 ref. 75.

<sup>47</sup> Ordningslag (1993:1617).

<sup>48</sup> Länsstyrelsen i Stockholm, 2020, Uppdrag om nationell samordning avseende utsatta EU/EES-medborgare som saknar uppehållsrätt i Sverige – SLUTRAPPORT, p. 73 – 74.

<sup>49</sup> Justitiekontorets betänkande 2019/20: JuU25, Motion 2019/20:3066.

<sup>50</sup> See in that regard, Bromölla kommun, 2019-03-19, Tjänsteskrivelse 2019/175

<sup>51</sup> See in that regard, Motion 2019/20:3066.

<sup>52</sup> See in that regard, Eskilstuna kommun, KSKF/2017:386 bilaga B Yrkande 2018-01-30.

<sup>53</sup> The European Roma Rights Centre, Third-party intervention *Lacatus v Switzerland*, p. 7 – 9.

[http://www.errc.org/uploads/upload\\_en/file/thirdparty-intervention-lacatus-v-switzerland-22-august-2016.pdf](http://www.errc.org/uploads/upload_en/file/thirdparty-intervention-lacatus-v-switzerland-22-august-2016.pdf)

<sup>54</sup> Regulations from, Bromölla kommun, Katrineholms kommun, Lidingö kommun, Eskilstuna kommun, Danderyd kommun and Kungälv kommun.

The Act makes it a crime just to sleep rough or beg in England and Wales. It also pushes vulnerable people further from the support they need. An article by Joe Hermer addresses the reasons why repealing this archaic vagrancy act is necessary.<sup>55</sup>

Organizations in the United Kingdom such as Crisis, Cymorth Cymru, Homeless Link, Shelter Cymru, St Mungo's and the Wallich are asking that the Vagrancy Act be scrapped.<sup>56</sup>

A Bill was introduced in Parliament in 2017 by an MP from Oxford but it was unsuccessful.<sup>57</sup> In February 2021 the Housing Secretary Robert Jenrick told Parliament that the Vagrancy Act should be repealed. However, months later it is still being used to criminalise people experiencing homelessness.<sup>58</sup>

In 2021, a cross-party group of peers, supported by Crisis, have tabled amendments to the policing bill currently going through the House of Lords. Their amendments intend to finally repeal the Vagrancy Act of 1824. Crisis' attempt to attach amendments to the Police, Crime, Sentencing and Courts Bill, as it went through the House of Lords, were successful. On 18<sup>th</sup> January 2022, the matter was pressed to a vote and the Government was defeated. The next hurdle comes when the bill returns to the Commons, as there are numerous procedural trip ups which may yet scupper this attempt at repeal.

The Government's line of opposition on this is that they fear a gap in legislation opening up if repealed, in relation to begging specifically. They want more time to complete a review that was started in 2018 and never published and then intend to 'repeal and replace'. Concerningly, they wish to look at international examples on 'passive begging' ('aggressive begging' is covered by legislation already in England and Wales) and legislate something potentially worse.

### Public Space Protection Orders

One threatening response to homelessness in the UK is the PSPOs (Public Space Protection Orders), which include a more punitive approach and may reach many more people in the UK.

The Anti-Social Behaviour, Crime and Policing Act 2014 gives councils the power to make Public Spaces Protection Orders (PSPOs) to ban any activities they consider as having a "*detrimental effect on the quality of life of those in the locality*". Orders carry £100 on-the-spot fines, or trips to court and potential £1,000 penalties if you don't pay the original charge. The vague definition of what can be criminalised is ripe for abuse, and local councils up and down the country have used them to ban rough sleeping and begging.

In December 2017, the Home Office issued guidance saying that PSPOs must not be used to target vulnerable people. However, this hasn't slowed councils down. Instead, they have

---

<sup>55</sup> Will the UK government finally repeal archaic vagrancy law in England and Wales? Joe Hermer: [https://www.feantsa.org/public/user/Resources/magazine/2020/Will\\_the\\_UK\\_Government\\_Finally\\_Repeal\\_Archaic\\_Vagrancy\\_Law\\_in\\_England\\_and\\_Wales\\_-\\_Homeless\\_in\\_Europe\\_Magazine\\_Spring2020\\_Criminalisation\\_of\\_homelessness-4.pdf](https://www.feantsa.org/public/user/Resources/magazine/2020/Will_the_UK_Government_Finally_Repeal_Archaic_Vagrancy_Law_in_England_and_Wales_-_Homeless_in_Europe_Magazine_Spring2020_Criminalisation_of_homelessness-4.pdf)

<sup>56</sup> Scrap the Vagrancy Act: <https://www.crisis.org.uk/get-involved/campaign/scrap-the-vagrancy-act/>

Scrapping the Act: repealing the outdated Vagrancy Act once and for all: <https://www.crisis.org.uk/about-us/the-crisis-blog/scrapping-the-act-repealing-the-outdated-vagrancy-act-once-and-for-all/>

<sup>57</sup> <https://services.parliament.uk/bills/2017-19/vagrancyrepeal.html>

<sup>58</sup> Calls for 'cruel' and 'antiquated' Vagrancy Act to be scrapped: <https://www.standard.co.uk/news/uk/robert-jenrick-government-campaigners-critics-nickie-aiken-b952184.html>

drafted Orders more creatively, banning leaving possessions on the street, blocking doorways, or lying down in public, for example – turning rough sleeping into a criminal act by the back door.

Liberty in the UK are actively challenging these PSPOs, they believe the Government must scrap the power to create PSPOs.

Research in 2017 aimed to examine how enforcement was being used specifically to address street homelessness in England and Wales. This research, by Crisis, analysed the extent to which enforcement measures impact on homeless people, local authorities, and other statutory and non-statutory services and how they interact with strategies to address wider antisocial behaviour.<sup>59</sup>

### **Poland**

The information contained in this section was written by Adam Ploszka, Human Rights Chair Warsaw University for a Workshop at the FEANTSA Annual Conference in Gdansk. (May 2017)

<sup>60</sup>

The fact that one is homeless and stays in public places or sleeps in the streets is not subject to penalty in Poland, but certain everyday activities related to homelessness are penalised, usually by the Code of Petty Offences from 20 May, 1971.

**Begging in a public place** is a petty offence (a misdemeanour) under Polish law. According to art. 58 of the Code of Petty Offences begging is committed if the perpetrator (i) has a means of subsistence, (ii) is able to work, or (iii) commits obtrusive or fraudulent begging.

- Liability for mere begging may consist of a fine of up to PLN 1,500 (approximately €365) or a reprimand
- Liability for obtrusive or fraudulent begging may be penalised by detention or restriction of liberty.

### **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) or a reprimand.

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

### **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.

---

<sup>59</sup> An examination of the scale and impact of enforcement interventions on street homeless people in England and Wales (2017) <https://www.crisis.org.uk/ending-homelessness/homelessness-knowledge-hub/types-of-homelessness/an-examination-of-the-scale-and-impact-of-enforcement-interventions-on-street-homeless-people-in-england-and-wales-2017/>

<sup>60</sup> [https://www.feantsa.org/download/english-programme\\_final1292850708755069597.pdf](https://www.feantsa.org/download/english-programme_final1292850708755069597.pdf)

### **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 to 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.

### **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.

### **Decriminalisation**

The Human Rights Commissioner appealed twice to the Minister of Justice to decriminalise begging. These appeals remain unanswered. He appealed in 2017<sup>61</sup> and then after the ECHR delivered *Lăcătuș v Switzerland* judgment in 2021.<sup>62</sup>

### **Romania**

Romania has decriminalised begging and only exploiting people is illegal for those engaging in exploitation.

## **Covid and punitive enforcement measures during the pandemic**

FEANTSA and its members have called to protect homeless people from punitive enforcement measures. Enforcement of confinement measures must take account of the special vulnerability of people experiencing homelessness and the lack of safe alternatives to public space that are available to them. Homeless people must not be punished for not staying at home. They must be protected from fines and other sanctions and provided with safe alternatives. The report for a previous submission can be consulted on the website of the UN Special Rapporteur on Adequate Housing.<sup>63</sup>

---

<sup>61</sup> Time to remove begging from the Code of Misdemeanours. 2017

<https://bip.brpo.gov.pl/pl/content/rpo-czas-usunac-zebractwo-z-kodeksu-wykroczen>

<sup>62</sup> It is high time to end the criminality of begging

<https://bip.brpo.gov.pl/pl/content/rpo-do-ms-zlikwidowac-karalnosc-zebractwa>

<sup>63</sup> COVID-19 and the right to housing. Coercive measures against homeless people Page 6

<https://www.ohchr.org/Documents/Issues/Housing/COVID19/CivilSociety/FEANTSA.docx>

### **Acknowledgements**

FEANTSA is grateful for our members' support in collecting information for this report. For more information on their work at national level, please contact the FEANTSA Secretariat.

For more information on FEANTSA's work check our website: <https://www.feantsa.org/en/resources/resources-database?search=criminalisation> or contact [maria.jose.aldanas@feantsa.org](mailto:maria.jose.aldanas@feantsa.org)