



FEANTSA

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Criminalising homeless people – banning begging in the EU

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Introduction

No person should ever have to sleep rough, or be forced to carry out life-sustaining activities in public spaces. Unfortunately, some homeless people are forced into just these situations. When people have no alternative, they should not be penalised or criminalised because they have nowhere to sleep, pass their time during the day, or cannot engage in active employment.

We have seen an increase in criminalising trends across Europe: from bans on begging in Scandinavia¹ to the installation of ‘defensive’ street furniture to prevent people from sitting or resting.² However, far more alarming is the increasing use of measures that are apparently unconnected to homelessness, which effectively allow police to ‘move on’, and sometimes harass homeless people. These measures give police and private security forces the power to remove people from public spaces, confiscate their belongings, destroy their possessions, and prohibit people from camping or sleeping outdoors, from lying down on benches and from rummaging in rubbish bins. When people undertake these activities in public, it is not a choice: it is because they have no other option. There is not enough housing, which means people are homeless, and when they are homeless they may need to make use of public space to carry out everyday activities. Homeless people are being treated like criminals because they have nowhere else to go.

Banning begging is gaining credence amongst policy makers as a way to ‘solve’ problems associated with homelessness and poverty. Most homeless people do not beg for money, however, FEANTSA believes that making it illegal to beg criminalises homelessness and poverty. Criminalising homelessness opens the door to police, policy makers and others wishing to push poor people out of public spaces and to claim that ‘homelessness’ has been solved. In fact this means that, homeless people who beg are simply forced onto the margins of society and become ‘invisible’, a situation which makes them more vulnerable (as they are unable to access services) and of course does nothing against the root causes of homelessness. So, while bans on begging are already controversial, whether they come in the form of local government regulations, laws or national policies, it is crucial to recognise that banning begging punishes people who have few or no other options to earn money. Those people who do beg are not doing so by choice but out of necessity, and are often coerced into begging. Laws against forced begging or begging with children are well-intentioned, but they must be accompanied by appropriate and sufficient support services.

Begging bans are often the tip of an ugly iceberg: a wide base of antisocial behaviour measures that can be used to punish or fine people in the name of disrupting the public order and measures that criminalise the use of public space by people considered ‘undesirable’ by policy makers and business owners. And, as the European Commissioner for Human Rights, Nils Muižnieks has said, “The criminalisation of poverty hides problems from the public view and undermines efforts to improve the living conditions of Roma [and others] who are stigmatised and discriminated against.”³ It is imperative that we ensure that public spaces, public infrastructure, and its furniture, is accessible to everyone – including homeless people.

¹for example, in Norway plans to ban begging have been ongoing, and was only recently dropped by the government in February 2015

²Recent examples include spikes placed outside apartment buildings in London

³ Nils Muižnieks - <http://www.coe.int/en/web/commissioner/-/recognise-legal-capacity-of-all-people-with-disabilities> - published on 23 January 2015



In 2013, FEANTSA published “Mean Streets: A report on the criminalisation of homelessness in Europe”⁴ which explored the context in which penalisation of poverty and marginalised groups has arisen over the past several decades, as well as highlighting examples of criminalisation policies. “Mean Streets” also includes examples of good practices, such as strategic litigation, to reverse criminalising measures, as well as recommendations for policy makers on how better to address the underlying causes of homelessness.

Background

What is criminalisation and penalisation of homelessness?

At local, regional and in some cases, national level policy makers across Europe are using the criminal justice system to minimise the visibility of people experiencing homelessness. Some local governments are motivated by the frustrations of business owners, residents and politicians who are frustrated and feel that homeless people put the safety and liveability of their cities and towns at risk. These feelings have prompted governments to establish formal and informal measures and enforcement policies to ‘limit where individuals who experience homelessness can congregate, and punish those who engage in life-sustaining or natural human activities in public spaces. Examples of such criminalisation strategies include the following.”⁵

- Legislation that makes it illegal to sleep, sit or store personal belongings in public spaces
- Ordinances that punish people for begging in order to move people who are poor or homeless out of a city or area
- Local measures which ban or limit food distribution in public places in an attempt to curb the congregation of individuals who are homeless
- Sweeps of areas in which people who are homeless are living in order to drive them out of those areas
- Selective enforcement of neutral laws such as crossing the street against the light, loitering, and public consumption of alcohol against people who are homeless
- Public health ordinances related to public activities and hygiene (e.g. public urination) regardless of whether public facilities are available
- Prohibition of removing items from rubbish or recycling bins
- Privatisation of public spaces and introducing private security services with the aim of excluding homeless people and other groups

De-criminalisation and new regulations - The concept of ‘penalisation’

In the late 1960s and 1970s, most EU countries decriminalised vagrancy at national level. However, as discussed in FEANTSA’s “Mean Streets”, following this ‘de-criminalisation’ of poverty and homelessness, a trend emerged: the use of local regulations to target groups living on the margins of society, including homeless people, and force them to ‘move on’ from public spaces. The concept of “penalisation,” therefore describes the different ways in which homeless people are penalised through the (re)-criminalising 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

⁴ Mean Streets: A Report on the Criminalisation of Homelessness in Europe, 2013, <http://www.housingrightswatch.org/sites/default/files/Mean%20Streets%20-%20Full.pdf>

⁵ Searching out solutions – constructive alternatives to the criminalization of homelessness, United States Interagency Council on Homelessness, 2012, retrieved from: http://www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf on 7 August 2013



visible reminders of poverty by putting homeless people in prisons, banning them from public places and detaining and deporting migrants. This concept of penalisation has been used by authors like Loïc Wacquant (2001) and the UN Special Rapporteur on Extreme Poverty and Human Rights (Sepúlveda, 2011).

Bans on begging

FEANSTA has been monitoring this issue for several years⁶, and after carrying out a survey of our member organisations, we can see a number of different ways in which begging is banned, or not, across Europe.

Only four countries include an explicit begging ban in their national legislation: Greece, Hungary, Italy and Romania. And in some countries, bans on begging are unconstitutional: for example Germany and Italy. However, many countries punish begging under their Penal Codes, or as actions that ‘breach the peace’ and are therefore disrupting public order. In Germany, Italy, France, and Poland there are specific conditions under which begging is generally forbidden, for example, begging with children, and in some cases, what is deemed ‘aggressive’ begging, or begging with a ‘dangerous’ animal (France⁷). In Italy for example, the ‘enslavement of older people or minors for the use of begging is also forbidden, in order to protect potential victims of such schemes.

In most EU countries⁸, local governments can and do ban begging. These anti-begging measures can be passed as stand-alone measures or might be under “Public Order” regulations. There are several problems with these measures. First of all, these bans are often in the form of administrative sanctions, and entail a fine. A person who is begging is unlikely to be able to pay the fine, will probably accumulate a number of fines or other penalties for begging. The accumulation of unpaid fines for begging or other offenses against the public order (e.g. loitering, removing items from rubbish or recycling bins, urinating in public, having too many possessions in a public space, consumption of alcohol in public, etc.) can lead to serious problems for people, including high levels of debt, being deemed ineligible for social housing (as is the case in some municipalities in Belgium), and other administrative issues that can make reintegration into society very difficult.

Many municipalities restrict their bans to ‘aggressive’ begging and limit the bans to certain areas within urban centres, particularly neighbourhoods featuring tourist attractions. For example in Budapest, it is illegal to beg, or to sleep in a public space, in some of the central, tourist districts. In Germany, some recently privatised places use security guards to effectively ban begging in shopping malls, supermarkets, etc.

⁶ See for example, European Journal on Homelessness, Vol 6, number 2

http://www.feantsaresearch.org/IMG/pdf/ejh6_2_article3.pdf and “Mean Streets – A Report on the Criminalisation of Homelessness in Europe,” published in 2013 <http://www.feantsa.org/spip.php?article1990&lang=en>, as well as numerous statements and press releases on the criminalisation of homelessness in Hungary

<http://www.feantsa.org/spip.php?article1019&lang=en>

⁷ Penal Code of France, article 312-12-1

⁸ From FEANTSA’s informal survey of 17 EU Member States, anti-begging measures can be passed by local government: Belgium, Czech Republic, Italy, Hungary, Romania, Greece, The Netherlands and Spain.



Research from the USA has demonstrated that even where cities limit the banning of begging to specific districts or places, the impact is significant. “This is because commercial and tourist districts, the areas where [begging] is most likely to be prohibited, are often the only places where homeless people have regular access to passers-by and potential donors. In the absence of employment opportunities or when homeless people are unable to access needed public benefits, [begging] may be a person’s only option for obtaining money. Many people fail to recognise that, even in an area with a relatively robust homeless services network, homeless people still need access to cash to pay for their stays in certain emergency shelters.”⁹

The problem of enforcement and a lack of information

Most of the laws and regulations pertaining to begging allow police a wide margin of discretion when it comes to enforcement. In many countries, only ‘aggressive’ begging is illegal or banned, but it remains unclear in many cases what can be considered ‘aggressive’. In Denmark, the local police have discretion over activity in the streets, and can forbid people from begging. In Poland, begging is punishable under the Polish Petty Offenses Act (Penal Code). Whilst a person can only be fined if she or he is able to work or has enough resources to live independently or if someone begs in an importunate or fraudulent manner, the law does not provide a definition of the level of resources deemed to be ‘enough to live independently’ nor of an ‘importunate or fraudulent manner’. The police are therefore able to decide at their discretion whether to charge someone with an offense, or simply ask the person to leave the area.

This discretion can provide the police with a helpful grey area, especially in countries like Portugal, and some parts of Italy, where the police work closely with social services and homeless services to support people who are sleeping rough and begging. And many countries report that the police do not enforce anti-begging measures that are in place in their cities. There is a flip side however, since police might use this discretion to discriminate against certain groups and in some cases to hassle or harass homeless people who have no other place to go.

There is not a systematic collection of data on how police enforce these regulations, or whether they are used to threaten homeless people in order to ‘move them along’. Across Europe, policies are in place to give local police and security companies the power to use fines or the threat of fines and prison to remove homeless people from tourist areas (France, Hungary, and Belgium) as well as from areas that were formerly public places, but are now in the hands of private companies (Germany).

Challenging criminalisation of homelessness – standing up for human rights

In some EU countries criminalisation measures have been successfully challenged in court. In France, Italy, Germany and Scotland, courts have ruled that it is unconstitutional to ban begging on a national level. Despite these successes, begging bans continue to be issued at local level and debated at national level, including Finland, and Norway. In Sweden, an influential and successful homelessness coordinator has ensured that such policies are not put in place, nor is the legislation on public order used to target people who are begging.

⁹ “No Safe Place”, National Law Center on Homelessness and Poverty, 2014, p. 21 http://www.nlchp.org/documents/No_Safe_Place, accessed 5 October 2014



As public awareness about this issue increases, it can be useful to consider criminalising homelessness as a violation of human rights. Seen in this light, it can easily be argued that being homeless and criminalised for having to carry out life-sustaining activities in public, should not be further punished by fines and in some cases prison sentences.

Campaigns in the USA have articulately argued that “many homeless people in the United States regularly face the degradation of performing basic bodily functions – sitting, eating, sleeping, and going to the bathroom -- in public, a condition which is compounded when they are criminally punished for doing so¹⁰ and leads to a climate which permits brutal violent crimes against homeless persons to take place.¹¹ The Human Rights Committee recognised criminalisation of homelessness as cruel, inhuman, and degrading treatment earlier this year in its Concluding Observations on the U.S.¹² and the U.S. government has also recognised it may be a violation of¹³ Convention Against Torture obligations.”¹⁴

Since all EU Member States have signed the same UN treaties as the USA, all should be equally bound by the UN’s recommendations. Measures that ban begging, as well as their discriminatory enforcement can be challenged both in local courts using this jurisprudence, or taken to international institutions like the Council of Europe in shadow reports, individual and collective complaints.

Conclusions

Do not punish people for being poor: poverty is not a crime:

- Laws and regulations that ban begging, are sanctioning actions, not people, however, the actions being sanctioned are directly related to the activities homeless people engage in to survive. Poverty and homelessness are not lifestyle choices, and people should not be punished for their situation. Support for homeless people to access housing, for example through Housing First programmes, or other approaches, are key to reducing homelessness.

All levels of government have an obligation to respect human rights and prevent discrimination:

- All EU Member States have signed the most comprehensive human rights treaties with both the UN and the Council of Europe. Many of these treaties, for example, the Convention Against Torture, as well as the European Convention of Human Rights, place an obligation on

¹⁰ UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS, (2012), available at www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf [hereinafter USICH, SEARCHING OUT SOLUTIONS]

¹¹ NATIONAL COALITION FOR THE HOMELESS, VULNERABLE TO HATE: A SURVEY OF HATE CRIMES & VIOLENCE COMMITTED AGAINST HOMELESS PEOPLE IN 2013, (2014), <http://nationalhomeless.org/wp-content/uploads/2014/06/Hate-Crimes-2013-FINAL.pdf>, [hereinafter NCH, VULNERABLE TO HATE]

¹² U.N. Human Rights Committee, *Concluding observations on the fourth report of the United States of America*, ¶ 19, U.N. Doc. CCPR/C/USA/CO/4 (2014), [hereinafter HRC, *Concluding observations*]

¹³ See USICH, SEARCHING OUT SOLUTIONS, *supra* note 3, at 8.

¹⁴ Report on the Criminalization of Homelessness in the USA – a Report to the U.N. Committee on the Convention Against Torture, prepared by the National Law Center on Homelessness and Poverty in September 2014

http://www.nlchp.org/documents/CAT_Criminalization_Shadow_Report_2014

governments to guarantee essential minimum standard for all economic, social and cultural rights, which includes providing access to essential health care services, shelter (and in some cases, housing) and education. States should respect these responsibilities and direct funding to help people in situation of poverty to fully enjoy all economic, political, social, civil and cultural rights, rather than to criminalising measures like bans on begging.

- States should eliminate all forms of direct and indirect discrimination and harassment in all their forms (including social origin) against homeless people, and they should implement all the necessary measures for this. The European Union Agency for Fundamental Rights should examine the impact of extreme poverty and social exclusion on access to fundamental rights, taking into account that enforcing the right to housing is essential for the enjoyment of many other rights, in particular political and social ones.

Using strategic litigation:

- Strategic litigation is an instrument for the prevention and protection of human rights. This begins at the local level, which is where major litigation efforts must focus. The contribution of international institutions, academics, ombudsmen, NGOs and other mobilisation organisations is evidenced in aspects like advice, support for victims, promoting human rights and performing actions that have a social projection. Strategic litigation should be planned involving public-interest and human rights NGOs and legal clinics. A priority on the agenda is to strengthen valuable instruments like joint actions, alliances and the “amicus curiae”.

Recommendations

FEANTSA addressed this issue more thoroughly in “Mean Streets – Report on the Criminalisation and Penalisation of Homelessness in Europe”, and calls on policy-makers to commit to the following:

The **European Union**, with its institutions including the **European Commission** and the **European Parliament** have a clear role in:

- Raising awareness about the criminalisation of homelessness. As guardians of the Treaties and in particular, as advocates for human rights in the European Union, the EU institutions should ensure that its policies do not violate human rights, and do not explicitly or inadvertently contribute to the criminalisation and penalisation of homelessness.
- Promoting alternatives to criminalisation by continuing to support MS to develop integrated strategies to tackle homelessness (as called for in the Social Investment Package) in the framework of Europe 2020 Strategy and the European Platform Against Poverty.

National governments should:

- Refrain from developing and implementing policies that criminalise and penalise homelessness
- Ensure that policies are not counterproductive. Many countries have excellent homelessness strategies in place, yet simultaneously allow cities and regions to persecute homeless people

for carrying out life-sustaining activities in public because there are no other housing options available. Social policy should not be carried out by local authorities in the guise of policy and security policies.

- Support the protection of human rights for all, including homeless people, by heeding reports and recommendations from Ombuds offices, National Human Rights Institutes, and NGOs.
- Raise awareness about the negative and highly disruptive impact of criminalisation and penalisation for homeless people who are trying to reintegrate into society.
- Ensure that enough supported permanent housing options are available.

Local governments should:

- Refrain from issuing policies that criminalise and penalise homeless people;
- Repeal all policies and measures that criminalise homeless people.
- Work closely with homeless service providers, advocates, academics, police forces and homeless people to ensure that coordinated policies ensure access to housing and support for homeless people, that human rights are respected and that homeless people are not punished for carrying out life-sustaining activities in public.
- Ensure access to supported permanent housing options.
- Ensure that public space and infrastructure is designed to be accessible to all, including homeless people
- Reverse the privatisation of public space and infrastructure to allow access for all, including homeless people

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For more information see: <http://ec.europa.eu/progress>

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Annex						
Country	Are there laws and/or regulations that ban begging in your country?					Have begging bans been successfully challenged?
	Is begging banned at national level?	Is forced begging banned?	Is begging with children banned?	Is aggressive begging banned?	Are there measures at local level banning begging?	
Austria	No	Yes	Yes	Yes	Yes	
Belgium	No				Yes	
Czech Republic	No				Yes	
Denmark	No				At discretion of the police	
France	No	Yes	Yes	Yes	Yes	Yes
Finland	No					
Germany	No		Yes	Yes	Yes	Yes
Greece	Yes	Yes	Yes		Yes	
Hungary	Yes				Yes	
Ireland	No				Yes	
Italy	Yes	Yes	Yes	Yes	Yes	Yes
The Netherlands	No				Yes	
Poland	Yes	Yes	Yes	Yes	No	
Portugal	No	Yes			No	
Romania	Yes					
Spain	Yes		Yes		Yes	
Sweden	No					Successful policies – homeless coordinator
UK	No	Yes				Yes