

An aerial photograph of a historic European city, likely Gdansk, Poland, featuring a dense cluster of buildings with red-tiled roofs and a river in the foreground. The image is split diagonally, with the top-left portion being dark and semi-transparent, serving as a background for the title text. The bottom-right portion shows the city in full color under a bright sky.

Criminalization of Homelessness in Poland and the role of human rights in the process of decriminalization of homelessness

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It is good to have a plan 😊

- Criminalization of homelessness in Poland
- Some remarks about human rights based approach to homelessness
- Can begging be perceived as a form of expression protected by freedom of speech?

Criminalization of homelessness in Poland

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

Begging in a public place is a petty offence (a misdemeanor) 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 the penalty of detention or restriction of liberty.

Bathing in forbidden areas

The Code penalizes 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.

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 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.

The essence of human rights based approach

The essence of such approach is to see homelessness as a human rights issue. (I) Homelessness in itself can be seen as a violation of human rights but on the other hand homelessness may be a cause (II) or may be an effect (III) of human rights violations.

The consequence of recognizing one of these circumstances is an ability to reconstruct the legal obligation of the public authorities to counteract it. The realization of such a duty, or lack of it, can be challenged in courts

International standard - Template for a Homeless Bill of Rights (non-binding)

K) The right to carry out practices necessary to survival within the law. While the Council strives for a city in which such practices are not necessary, we recognize that where people have no other option they will seek support from other people through begging or forage for discarded food to survive. **Such survival practices should not be criminalized in their own right, banned or arbitrarily confined to specific areas.**

International standard: – The UN Guiding Principles on Extreme Poverty and Human Rights (non-binding)

66. States should:

- (c) Repeal or reform any laws that criminalize life-sustaining activities in public places, such as sleeping, begging, eating or performing personal hygiene activities;
- (d) Review sanctions procedures that require the payment of disproportionate fines by persons living in poverty, especially those related to begging, use of public space and welfare fraud, and consider abolishing prison sentences for non-payment of fines for those unable to pay.

There are no binding norms which refers to
criminalization of homelessness

but

there is a possibility for finding them in a new
interpretation of existing human rights

begging can be seen as a form of expression protected by freedom of speech

5 of 13 circuit courts of USA declared that begging has to be protected by first amendment to Constitution.

Begging implicates each of the three speech interests that the Supreme Court has examined in holding charitable solicitation to be protected: like solicitation for organized charities, begging involves **"communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes"**.

Thank you for your attention!

way of staying in touch:

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