

Seminar 2: Criminal Justice and Homelessness (1) (Floor -1, Room 8)

Chair: **Nóra Teller, HU**

Tamara Walsh, AU: Criminalisation of Homelessness in Australia: A National Study



Tamara Walsh is a Professor of Law at the University of Queensland. Her research focuses on social welfare law, and the impact of the law on vulnerable people. She has a special interest in homelessness, child protection and youth justice. Most of her studies are sociolegal and empirical in nature, and she draws on human rights law to explore how the law can help solve complex social problems. She lectures in human rights law and family and child law. She has degrees in both law and social work, and continues to volunteer as a solicitor in child protection matters.

Between 2017-2021, we conducted a large-scale national study on the criminalisation of homelessness in Australia. We spoke with people experiencing homelessness, and a range of criminal justice 'professionals' including lawyers, magistrates and police officers, in 10 different locations around the country. We asked them about how the law criminalises homelessness and how systems need to change to address this problem. We found that some offences criminalise homelessness directly, including trespass and 'public nuisance' Other offences criminalise poverty, including fare evasion, shop stealing and begging. Others indirectly criminalise homelessness by criminalising behaviours conducted in public which would be lawful, or undetected, if conducted in private, such as public intoxication, carrying a knife or possessing small quantities of drugs.

What was most interesting about our findings was that the 'professional' participants put forward very different suggestions for reform than the participants who were experiencing homelessness. People experiencing homelessness generally wanted only two things: housing, and to be left alone. They wanted to have the freedom to live their lives in the way they chose without interference from any 'systems'. They recognised that, without having a private, secure and safe home to go to, they would continue to be subject to interference from the criminal law system. The 'professionals' on the other hand recommended additional treatment programs for mental illness and drug addiction, and court processes that provided case management services to address the causes of offending. The 'professionals' were well-meaning – they wanted to ensure that people experiencing homelessness received the 'help' and 'support' they need. However, those with lived experience of homelessness simply wanted autonomy, privacy and freedom of choice. Our results provide interesting insights on the 'welfarisaton' of criminal justice, and the unintended negative consequences that result for those who are subject to it.

Pia Justesen, DK: Begging in Denmark - Criminalization and its discriminatory Effect



Pia is Master of law (1994), Ph.D. (2000 in human rights), and Mediation Master (2010). Has a background in research (the University of Copenhagen, the University of Aarhus, the Danish Institute for Human Rights, and Yale University) as well as in the legal and consulting industry (Bech-Bruun Law Firm and Justadvice). Since 2021 she has been a researcher at the University of Aalborg, the Department of Architecture, Design and Media Technology on a project re. Dark Design and Social Exclusion in Public Spaces. Pia has a long list of publications on human rights, equal treatment, and social justice and is the Danish expert in The European Equality Law Network. Recently, Pia lived and worked in the US and published the oral history book "From the Periphery - Real-Life Stories of Disability" (Chicago Review Press).

This paper investigates the criminalization of homelessness with a particular focus on begging bans in Denmark. In the Lisbon Declaration on the European Platform on Combatting Homelessness from 21 June 2021, the European Union, the Member States, and civil society agreed to work towards the ending of homelessness by 2030. At the same time member states like



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Denmark continue to uphold laws criminalizing begging and other use of public spaces considered “unwanted”. A discrepancy between the overall commitment to end homelessness and the actual legal situation in Denmark seems to be the case. Because of criminalization, people experiencing homelessness tell that they feel more unsafe. They hide, which complicates efforts from authorities and civil society to help them away from the street and eventually end homelessness. When the Danish prohibition of so-called “intimidating begging” was enacted in June 2017, the expressed intention from a majority of the Danish Parliament was to target homeless migrants having a Roma background. The penal code encompassing the new begging ban was, however, worded in a non-discriminatory manner. The paper will include a legal analysis of the preparatory works of the 2017-prohibition as well as case law and statistics covering the period from June 2017 to early 2022. The aim is to analyze whether and possibly to which extent, the begging ban has a discriminatory effect. Oral histories from individuals who have been imprisoned for begging will provide possible answers to the question: “Who is the so-called intimidating beggar”?