

CRIMINALISING ROUGH SLEEPING IN 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. This article focuses on the legal ban on encampments, the legal practice as well as practical and personal consequences this has had for street people.



By **Maja Lovbjerg Hansen**, Street Lawyer, Gadejuristen, Denmark

FACTS - HOMELESSNESS IN DENMARK

Denmark has a homeless population of approximately 6.400 people¹ (total population 5,6 million) and of these 730 are rough sleepers, while the rest stay in shelters, with friends and family, or similar. In addition, Denmark has approximately 500 migrant homeless people, and of these approximately 200 are rough sleepers.²

HISTORY

In the last 15 years Denmark has seen an increase of eastern European migrants.

A small number of these migrants have taken residency on the streets, where they provide for themselves through (in a Danish context) odd jobs i.e. collecting bottles (using the refund system), selling street newspapers, by begging or by conducting petty crimes. Some enter Denmark with the intent of settling permanently and lose their job or never secure one, and others come from families or communities for whom travelling Europe and finding irregular means of survival is the norm. If they end up in a situation of homelessness, a portion of these migrants end up dealing with the same social conditions as Danes who live on the street and thus are likely to experience mental health issues, physical illness, problematic alcohol/drug use and isolation.

In 2017 Denmark held local elections and a few very vocal, local politicians made it their primary priority to reduce the numbers of street migrants. The collective group of street migrants was dubbed

1 2019 numbers

2 <https://www.vive.dk/media/pure/14218/3352843>

“Romas and thieves” and their presence was claimed to be upsetting and creating discomfort for the general Danish population.

The population was urged, by both politicians and the police, to report groups of rough sleeping homeless people to the police, so the police could go and check if anything illegal was going on. Based on the political debate the government decided to adjust the Executive Order on Public Order (The Public Order).

PUBLIC ORDER LEGISLATION

The Ministry of Justice amended the Public Order by implementing a new article 3 (4): *“In places with public access it is prohibited to establish and stay in camps, which are capable of creating discomfort in the neighborhood.”* The adjustment came as an administrative amendment in the Public Order and without any parliamentary debate. The Minister of Justice explained that a camp would usually be something like two or more wanderers, establishing a camp. In addition, the camp must be a source of discomfort.

The Minister of Justice stated that the number of persons in the camp, noise, nuisance, and crime committed “from the camp” could indicate that the camp was capable of creating discomfort. In the media debate that followed it was stated several times by the Minister of Justice that this new legislation did not criminalise homelessness and that a homeless person would still be able to roll out their sleeping bag for the night. Even so, the politicians would rather see the homeless migrants returned to their place of origin and the homeless Danes to be in a shelter.



AREA BANS

In addition to the new public order legislation, the police were given the authority to issue an area-ban of 400-800 meters to individuals staying in such camps. The area bans later expanded to cover the whole municipality where the camp was set up.

Article 6(3):

“If a person has violated article 3(4) (of The Public Order) the police can prohibit the person concerned from moving back and forth or staying within the municipality in which the violation was committed. It is a condition for issuing a prohibition that there is reason to believe the person concerned would otherwise repeat the offence within the area which is covered by the prohibition.”

In the legal proposal it was stated that the reason behind the provision was an increase in homeless camps in the public space during the summer of 2016. Such camps were seen to be a risk to the public order as they could bring nuisance in the form of noise and unrest, and unsanitary conditions, which could cause a feeling of discomfort in the local communities.

IMPLEMENTATION

The first cases of implementation that we observed affected groups of five or six people sleeping together in tunnels during rainy nights. But soon after, we also saw two people who were sleeping as a pair being fined, and after a while we knew of three cases of homeless people rough sleeping alone being fined for sleeping in a “camp”. The following cases illustrate a number of examples of this legislation being implemented.

Case:

In August 2018 two Romanian men (a father and his grown son) were sleeping in the main pedestrian street in Copenhagen. They were woken by Copenhagen Police at 5.20 pm. Their fines stated that they had established a camp with blankets, luggage and a cover. They had a stroller next to their “camp” containing some clothes, some blankets and other personal belongings. They had gotten the stroller from a trash pile and they had bought some food. They explained, in court, that they ate and lived on the streets, and that they only stayed in the spot, where they were arrested during the night, when the shops were closed. They had been collecting bottles on the streets the last five years and had stayed at the spot a couple of times before, but they never slept there for more than 1-2 hours at a time. They preferred sleeping in shelters but could not always get a spot. They explained that they preferred to sleep in the inner city, because the police were nearby in case anybody assaulted or try to rob them. They explained that they would never urinate on the streets but always used the public restrooms. They were acquitted in court in March 2019.



Case:

In January 2018 a homeless man from Romania was arrested on a pedestrian street for sleeping in the doorway of a closed shop. He was sleeping on some cardboard and blankets and had a cover over him. He had some personal belongings in a shopping cart next to him. He explained, that he preferred sleeping in shelters, but slept there when the shelter was full. He always left the spot before seven in the morning and always cleaned up after himself.

The man was convicted of camping in September 2018. The court stated that the cardboard was a form of establishing and that him carrying food could attract rats, which was not good.

The case was presented in national court in March 2019 where the man was acquitted.

Case:

In October 2018 six men were arrested for sleeping under an archway in central Copenhagen. It was raining. Three of the arrested were Danish citizens. Two of the Danish men complained and it sparked public outrage that Danish homeless people had been arrested for sleeping rough and had had an area ban issued from the city that they normally resided in. For three months they were not allowed to stay in the city, unless they had a "recognizable aim." They were acquitted in city court in November 2019.

DISCRIMINATION

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 apologized for "not being able to discriminate EU-citizens." Their meaning was that approximately 200 migrant rough sleepers' behavior in public was of such a severe degree that the Danish homeless population would have to suffer the same punishment due to the EU regulation hindering discrimination.

It was very clear early in the process, that the new legislation was being implemented in a repressive manner by Copenhagen Police, who chose to task the immigration unit with handling actions after this article.

The Street Lawyers repeatedly wrote to lawmakers and the Ministry of Justice, that the legislation seemed to be used discriminatively and very aggressively, but it was not until the police arrested two Danish citizens, who were willing to participate in the media debate and go on television to tell their life stories, that politicians were open to amending the law.



POLICE ROLES IN SOCIETY

The combination of political pressure on police to show results, unclear punitive legislation, and a marginalized population with several and complex vulnerabilities, was never going to end well. The fact that politicians have subsequently voiced surprise that the legislation was not used in the intended way, shows how little concern was put into implementing it. It also exemplifies how a lack of real interest in marginalized groups with vulnerabilities will result in worsening the situation.

No one ever became less homeless, less sick, or less marginalized through fines and criminalisation.

While there is so much focus on public safety that we now have a regulation protecting the potential risk of someone creating discomfort, there is little focus on the safety of the homeless population and the very real threat that they face in public spaces in the form of assault, disease from weather exposure, and mental health disadvantages from isolation.

In 2019 Denmark got a new government. It is stated in their government vision paper that the laws on camps should be mended, so that they do not criminalise regular homeless people sleeping alone or together with a friend.

“The fact that politicians have subsequently voiced surprise that the legislation was not used in the intended way, shows how little concern was put into implementing it.”

