

SPRING 2020

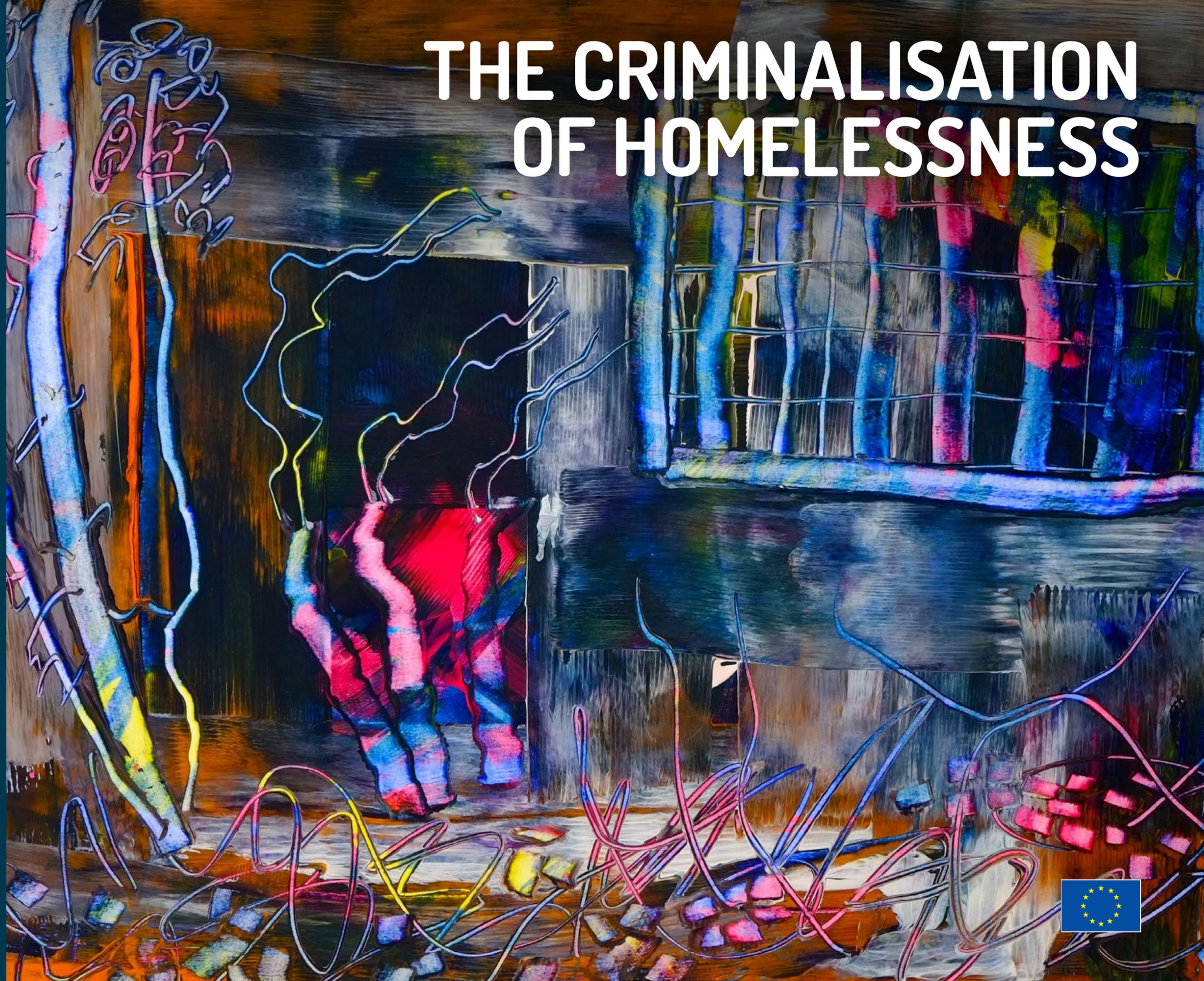
Homeless in Europe

A Magazine by FEANTSA



FEANTSA

THE CRIMINALISATION OF HOMELESSNESS



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The present issue of the FEANTSA magazine focuses on repressive and coercive approaches towards people who are homeless and their survival practices in public space. We were ready to proofread and edit the articles we had received for our Spring magazine, when the Covid19 outbreak shook our societies in a way that we could not have imagined. As Homeless people are especially vulnerable to the virus, FEANTSA has called for public authorities to take measures to protect homeless people and public health. We have seen governments using all possible resources to provide them with emergency accommodation and many other measures have been taken to ensure that people relying on homeless services like shelter and food distribution were as safe as possible. If anything, this pandemic has shown governments can solve homelessness if they wish. Still, we are wondering to what extent the services in place will be maintained when we go back to “normal life”. Among other things, we called to protect homeless people from punitive enforcement measures as homeless people should not be punished for staying in public spaces during the lockdown. They must be protected from fines and other sanctions and provided with safe alternatives, not just in times of COVID but in the future, too.

The social and economic policies of the last few decades have encouraged increasing hostility towards people who are homeless, in particular when it comes to their presence in public spaces, and efforts tend to aim at making them invisible rather than meeting their social needs. There has been an increasing amount of control exercised over urban public spaces. Undoubtedly, economic growth and globalisation have brought about a growing culture of control where the State seeks to dominate the social climate. Equally, many urban spaces have seen rapid gentrification, with poorer groups being forced out. These factors have led to a shift in power when it comes to the very nature of public spaces in cities, as they became increasingly privatised.

The present issue looks at repressive and coercive approaches across Europe and the USA. Whether in Europe or in the United States, there is overwhelming evidence that people who are homeless are being criminalised for the activities they are forced to carry out in public space, when really, what is needed is a focus on social policies to address their situation. This approach is highly problematic for organisations working with homeless people and advocating for change. By framing homelessness as a public order and nuisance issue, it seeks to shift the responsibility away from public policy and over to the individuals experiencing homelessness. As you will see, contributions in this present issue of the magazine have highlighted different aspects of the problem.

EDITORIAL



By **Maria José Aldanas**, Policy Officer, FEANTSA

At FEANTSA we have been working to raise awareness about the pitfalls of this approach to homelessness for many years already, starting with our 'Poverty is Not a Crime' campaign back in 2013, whose aim it was to denounce criminalisation measures in Europe. Our most recent initiative relaunched in 2019 asks cities to endorse the [Homeless Bill of Rights](#), a compilation of existing rights drawn from European and International human rights law. This time we wanted to emphasize the role of cities in tackling homelessness and upholding human rights at local level. By endorsing the bill, cities can reaffirm their commitment to human rights. Our goal is to raise public debate and awareness on the need to fair treatment for homeless people, especially those who are forced to sleep rough.

In this respect, we have asked our colleague David Thomas of the Brighton and Hove Housing Coalition to explain their experience in advocating for homeless rights using the Homeless Bill of Rights in Brighton and Hove, UK. His article explains how his organization advocated for the Homeless Bill of Rights, which eventually resulted in its adoption by the Labour party on the initiative of Shoreham Councillor Debs Stainforth, and *"thereafter in all its policies, practices and procedures that affect the homeless"*.

When we speak about criminalisation of homelessness in the UK, there is an ancient piece of legislation that cannot be left unmentioned, and which is still enforced today: the Vagrancy Act. Some months ago, our UK member Crisis launched the Repeal the Vagrancy Act campaign to try to derogate this piece of legislation. Joe Hermer,

Professor of Sociology at the University of Toronto, tells us more about the Vagrancy act and the main goals and activities of the Crisis campaign.

Moving up north to Sweden, a decision of Supreme Administrative Court from December 2018 ruled that municipalities were best placed to decide on the need for local rules on begging, or 'disorderly behavior', in public spaces. This ruling therefore provided all Swedish municipalities with the power to introduce local laws concerning begging. It was in this context that the Eskiltuna city council introduced a "begging permit" – a mandatory authorization request, to be submitted to the police, for passively begging for money. Our colleague Martin Enquist, from Stadmissionen, explains how this outrageous law was put in place.

A little further down north, Maja Løvbjerg Hansen, a jurist at [Gadejuristen](#) in Denmark, exposes the repressive legal actions targeting non-Danish EU-citizens who are on the streets. Her article focuses on the legal ban on encampments, the legal practice as well as practical and personal consequences for people sleeping rough.

In France, the crimes of vagrancy and begging were abolished in 1994. However, this does not mean that all is well in the hexagon: poverty and exclusion are still very much repressed. Noria Derdek, from the legal team at the Abbe Pierre Foundation, explains the legal actions they have taken to challenge these ordinances.



Over to eastern Europe, Hungary is probably one of the countries where the legal framework has the most dramatic impact on the wider homeless population. Our colleague Dora Szegő from Hungarian Civil Liberties Union (TASZ), describes the consequences of the amendment to the Constitution – which effectively forbid rough sleeping altogether - and explains how the Petty Offences Working Group, a volunteer network of lawyers (from the Hungarian Helsinki Committee, the Hungarian Civil Liberties Union, and the Street Lawyers), is fighting to defend those prosecuted on this ground in Hungary.

Outside Europe, the [Martin v. City of Boise](#) case has had a significant impact across the United States. The Law Center has been litigating this case for almost a decade together with other legal actors, and in

September 2018 major progress was made when the United States Court of Appeals for the Ninth Circuit ruled that “*it is cruel and unusual punishment to criminalise the simple act of sleeping outside on public property when no alternative adequate shelter exists*”. The decision was recently confirmed by the Supreme Court. Maria Foscarinis, Founder and Executive Director of the National Law Center on Homelessness & Poverty wrote about the legal battle and eventual victory regarding the criminalisation of rough sleeping.

As always, FEANTSA would like to extend its sincere thanks to the contributors to this issue of the magazine. Bear in mind that the circumstances may have changed in some countries as a result of the Covid19 outbreak. If you have questions or comments regarding the magazine, please send them to: maria.jose.aldanas@feantsa.org.

“By framing homelessness as a public order and nuisance issue, [the criminalisation approach] seeks to shift the responsibility away from public policy and over to the individuals experiencing homelessness.”



Finding that the rights of its city's homeless population were often being neglected, the Brighton and Hove Housing Coalition – a group of housing activist organizations and individuals – brought the Homeless Bill of Rights before their council. David Thomas explains how BHHC did it and what the future might look like for a city that has adopted the Homeless Bill of Rights.

THE BRIGHTON AND HOVE HOMELESS BILL OF RIGHTS



By **David Thomas**, Brighton and Hove Housing Coalition, UK

INTRODUCTION

The Brighton and Hove Housing Coalition (BHHC)¹ was founded by Steve Parry, a veteran housing activist, in 2017. It is a coalition of housing activist organizations and individuals, excluding political organizations and organizations in receipt of state funding, which maintains a fiercely critical stance and campaigns on many housing related issues. Its executive includes several people who have been homeless themselves. Its work is specific to Brighton and Hove, a city on the south coast of Britain.

The situation in the UK with regard to homelessness is a familiar one in Europe. The financialization of the housing market and the very limited amount of social housing being built led to a problem with homelessness that was made much worse by the austerity policies pursued since 2010; much reduced funding for local authorities was coupled with reduced funding for a welfare state that was less and less capable of acting as a safety net. As a result, from 2010 to 2019, the official figure for the number of rough sleepers increased by 141% to 4,266 in England,² with the true figure believed to be very much higher. The total number for people experiencing homelessness, including those in temporary and emergency accommodation and hostels, stood at 280,000 in England in 2019.³

1 <https://housingcoalition.co.uk/>

2 MCLGH (Ministry of Housing, Communities and Local Government) 2020. *Rough Sleeping Snapshot in England: Autumn 2019*. <https://www.gov.uk/government/publications/rough-sleeping-snapshot-in-england-autumn-2019>

3 Shelter 2019. *This is England: A Picture of Homelessness in 2019: The Numbers Behind the Story*. https://england.shelter.org.uk/_data/assets/pdf_file/0009/1883817/This_is_England_A_picture_of_homelessness_in_2019.pdf

Throughout its campaigning work on homelessness, the Coalition has become increasingly concerned with the way that rough sleepers are treated. Far too often rough sleepers experience criminalisation and exclusion from public places. The Vagrancy Act 1824 makes begging a crime. Brighton and Hove, like many other local authorities, had a local criminal/administrative measure - a "Public Spaces Protection Order" - targeting homeless encampments.⁴ Also, in practice, the city's rubbish collection agents frequently dispose of rough sleepers' belongings without warning and private security (paid for by retailers) move them on from privately owned "public" spaces.

Even where national and local policies and services are intended to help homeless people, they tend to treat them as a problem to be solved, rather than as citizens who should be treated as such. Homeless people complain that they are treated in a patronising manner and without respect.

THE HOMELESS BILL OF RIGHTS

We often found ourselves making arguments against these tendencies, using human rights; we fought for better provision of severe weather shelters, for better protection for tent dwellers, and for more consideration for the belongings of the homeless. Eventually we came across FEANTSA's campaign for the Homeless Bill of Rights. This document, intended for adoption and use at a municipal level, seemed to us to be a campaign worth pursuing. If we could persuade the City Council to adopt it, we could use it to hold them to account and to make arguments across the whole range of our concerns.

4 This expired in December 2019 and (partly because of campaigning efforts) was not renewed.





If we could persuade the City Council to adopt [the Homeless Bill of Rights], we could use it to hold them to account and to make arguments across the whole range of our concerns.”

We particularly liked the fact that Article 1 restated the right to a home. We did not wish to normalize homelessness. The fact that homelessness exists in the UK means that the country is **already** in breach of its human rights obligations.

Working with FEANTSA, we tweaked the English translation of the document to make it clearer and more colloquial, and added two more Articles to reflect the concerns of a consultation we carried out with currently homeless people. The first was the right to personal property, which is protected in Article 1 of Protocol 1 to the European Convention for Human Rights. Homeless people were seeing their property casually confiscated or destroyed very regularly and this issue was vital for them. The second required the City to investigate and record homeless deaths; then and now there is no duty on the state or local authorities to do this, which we found unacceptable. FEANTSA was happy with our amendments.

We launched the Homeless Bill of Rights for Brighton and Hove at the local street kitchen and in a nearby hall on 28th of October 2018. Maria José Aldanas of FEANTSA attended, as did Jamie Burton, Chair of the UK human rights organization Just Fair, and many local activists. The city was due for local elections in May 2019. By that time we had managed to induce both the Labour Party and the Green Party (the two largest parties in the event) to commit to the Homeless Bill of Rights in their manifestos. Following the election, we promoted a 38 Degrees petition, which, when it reached 2,500 signatures, we took to the full Council in a public event.⁵ Since then the Homeless Bill of Rights has been passing through committees and consultations and we strongly hope that it will be fully adopted before the summer. The campaign and its various stages and achievements are documented at a dedicated website for the Homeless Bill of Rights in the UK: www.homelessrights.org.uk.

⁵ <https://you.38degrees.org.uk/petitions/adopt-the-homeless-bill-of-rights-for-brighton-hove/>.



CONSIDERATIONS

There is a danger that the Homeless Bill of Rights will be adopted by the city simply as an expression of public goodwill with no actual policy consequences. Against this danger, we have repeatedly said to the City Council that the Homeless Bill of Rights and its principles should be embedded in everything they do relating to homeless people from the point of adoption: that they should review all their existing policies, practices and procedures that affect the homeless for compliance with the Homeless Bill of Rights, and make proposals for new policies that will work effectively towards making the council compliant. Moreover, every future measure dealing with homeless people from now on must report on the manner and the extent to which it is compliant. Homelessness is not one of the “protected characteristics” in UK equalities legislation, but we claim that at this time of widespread and increasing homelessness, in this city, it must be treated as if it is. Furthermore, the Council should seek, in all its relationships with NGOs, to encourage, and require where appropriate, compliance with the Homeless Bill of Rights.

It is not clear whether these demands will be met, in full or in part. But what we can do, and intend to do ourselves, is to carry out an annual audit of the Council’s activities against the Homeless Bill of Rights, an audit in which we hope all the independent organizations helping the homeless in the city will join. In addition, as we have always intended, we shall use the Homeless Bill of Rights to sustain arguments in many specific battles to improve the situation of the homeless.

Human Rights have their problems as a method or theory for activism. They can blur political issues into moralism, and they have

the potential to disempower the collective efforts of the oppressed in favour of the humanitarian intervention of the elites. If we were to start this campaign again, we might argue for a further Article to be included, a development of Article 11 (the right to survival practices); a right to act collectively in making informal settlements in self-protection.

However, in some ways human rights are a very good fit for the worldwide campaign against the criminalisation and marginalization of homeless people. Here what we are arguing for is the rights of the individual, and the universality of human rights – that all human beings are born free and equal in dignity and rights – is what we need; in particular, human rights cut through all the distinctions of national legislation, between children and adults, those with a local connection and those without, and especially those who have a right to stay in the nation and those who have not. Many of the people on our streets throughout Europe are without papers but we can refuse that distinction by using human rights.

CONCLUSION

We are told that it is unusual for the demand for the Homeless Bill of Rights to come from independent, grassroots organizations such as Brighton and Hove Housing Coalition. We think there are advantages to such an approach. The danger is always that such a document is co-opted by the city bureaucracy. If there is an external independent movement advocating for it, that can hold the city to account for the dignity and equality of all its citizens, whether or not they have a home, then there is a chance that the original, radical edge of human rights can be perpetuated.



The UK government is set to release a long-awaited review of the laws related to rough sleepers and homeless people, and the Vagrancy Act 1824 in particular. The issue has now taken on a real urgency with the Coronavirus pandemic, and the fact is that homeless people, and those who work with them, are disproportionately at risk of illness and death.

WILL THE UK GOVERNMENT FINALLY REPEAL ARCHAIC VAGRANCY LAW IN ENGLAND AND WALES?



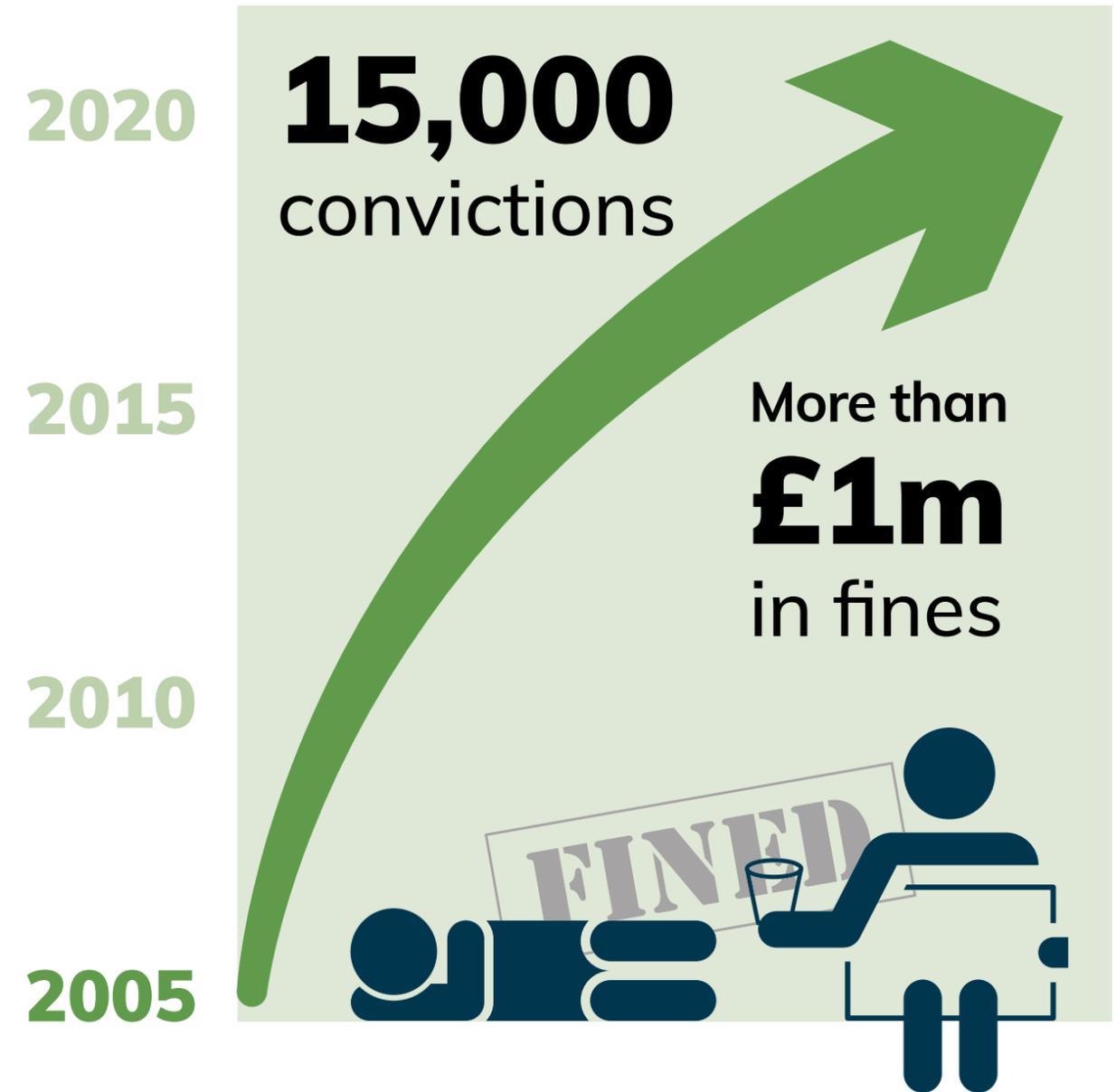
By **Joe Hermer**, Associate Professor of Sociology at the University of Toronto, Canada

THE VAGRANCY ACT 1824 IN 2020'S CORONAVIRUS CRISIS

The UK government is set to release a long-awaited review of the laws related to rough sleepers and homeless people. In particular, it is expected to announce the fate of Vagrancy Act 1824, which remarkably 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. The issue has now taken on a real urgency with the Coronavirus pandemic, and the fact is that homeless people, and those who work with them, are disproportionately at risk of illness and death.

AN OUTRAGEOUS ABUSE OF THE CRIMINAL JUSTICE SYSTEM

With the growing numbers of homeless people and rough sleepers reaching historic levels in England, the vagrancy law has faced renewed criticism as a cruel response to abject poverty and suffering. To be a rough sleeper is to struggle to maintain the basic requirements of keeping the body alive. Mental and physical illnesses, trauma and abuse go undiagnosed and untreated. People who have suffered greatly, such as women fleeing the violence and profound trauma of domestic abuse, are at risk of being even further victimised. Homelessness is a slow death sentence: hundreds of [rough sleepers die every year](#) in circumstances that are completely preventable.





Research by the homelessness charity Crisis and the Guardian found that in the past five years, 8,500 people have been arrested under the [Vagrancy] Act.”

The Vagrancy Act adds to this suffering and death toll by victimising rough sleepers while at the same time damaging street outreach and rehousing strategies. The specific ‘crime’ that is enforced to these dark ends is that of begging. Today the begging offence is being actively and at times aggressively enforced against rough sleepers. Since 2005 more than 15,000 convictions have been registered, resulting in more than a million pounds in fines – [an outrageous abuse of the criminal justice system](#). Research by the homelessness charity Crisis and the Guardian found that in the past five years, 8,500 people have been arrested under the Act. And for every arrest, there are likely dozens of times rough sleepers are informally ‘moved on’ from a space they are simply trying to survive in.

MISCONCEPTIONS AND USES OF THE VAGRANCY ACT

How is the begging offence, which in vagrancy law dates back to 1349, used against rough sleepers? Are rough sleeping and begging not separate activities? But to state that the begging offence is not applicable to rough sleepers is to reveal a fundamental misunderstanding of modern policing and the truly archaic nature of vagrancy law. The [1824 begging offence](#) has always been about policing visibly poor people, including rough sleepers. It is often said that it was enacted to address veterans of the Napoleonic Wars who begged on the street, sometimes displaying open wounds. But this description obscures its much wider purpose. If you read the parliamentary investigations that led to the Act, it is clear that the begging offence is about overall control of visibly poor people and who should be responsible for them.



Crisis recognises this threat to rough sleepers in its [campaign](#) to have the Act repealed. As the charity has documented, rough sleepers are routinely assumed to be begging simply by being present in public spaces. The archaic wording of the begging offence – ‘to beg or gather alms’ – is so vague as to include the mere presence of a rough sleeper on the pavement. Officials often claim that the Act is limited to arresting only ‘persistent’ beggars who harass or intimidate passers-by. This is not true, and a wrong reading of the law. Just sitting on the pavement, appearing poor and in need of help, is policed as begging.

TO PROTECT, NOT PERSECUTE

It is important to note that some police officials are now questioning the use of vagrancy law. I believe many frontline officers feel that enforcing the Vagrancy Act dishonours their profession. But the fact remains that, as long as the law exists, the police will have a duty to enforce it and can legitimately be pressured to do so. Repealing the Act will enable them to do the job they are trained for and which the public expects: to protect – not persecute – a highly vulnerable and victimized group.

At the same time, being poor or homeless is no excuse for real criminal behaviour. People who harass, menace or threaten others should be dealt with by police action. Today’s police and local authorities have a flexible range of relatively new legal tools to deal with harmful or fraudulent behaviour in public spaces.

REPEALING THE ACT – A MORAL IMPERATIVE

Repealing the Vagrancy Act will not solve homelessness. But it will remove a centuries-old legal prejudice against poor people in public spaces, a prejudice that adds greatly to the suffering of rough sleepers while also frustrating collective efforts to help them. With the coronavirus pandemic posing a particularly deadly threat to vulnerable populations such as people forced to sleep on the streets, the intention to repeal this cruel law should become nothing less than a moral imperative.



THE SPREAD OF ANTI-BEGGING MEASURES AND THE ABSENCE OF FREE MOVEMENT RIGHTS IN SWEDEN

The transposition of the free movement directive into Swedish law in 2006 kickstarted a debate about Sweden's responsibility for EU citizens residing in their country; in particular giving way to the introduction of a number of anti-begging laws at municipal level and the proposal of a national anti-begging law. Martin Enquist Källgren explains why these laws do not provide a solution and what Sweden should do instead.



By **Martin Enquist Källgren**, Legal counsel and Operations Development Officer on access to social rights, Stockholms Stadsmission, Sweden

FREE MOVEMENT & RESPONSIBILITY

Following the Swedish transposition of the free movement directive¹ in April 2006, EU citizens have been able to move to and reside freely within Sweden. Along with an increasing number of EU citizens invoking their right to free movement, a public debate has emerged around Sweden's responsibility for the destitute EU citizens who reside in the country. In particular, a discussion about whether begging should be prohibited has attracted much political and media attention. Until recently, the issue has been a political debate upheld primarily by *Sverigedemokraterna* (Sweden Democrats) but, due to a recent decision from the Supreme Administrative Court, the political and legal landscape has changed rapidly.

ANTI-BEGGING LAWS FIND GROUND

The debate about prohibiting begging in Sweden has been going on for several years. In 2011 *Sverigedemokraterna* proposed a ban on begging to the *Riksdagen* (Swedish Parliament).² 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.³ The proposals have consequently been rejected by the parliament's judicial committee, who state that begging is not a criminal offence in Sweden, but

1 Directive 2004/38/EC.

2 Parliament proposal: motion 2011/12:Sf344.

3 Justitiekommitténs betänkande 2015/16:JuU20, p. 73 and Justitiekommitténs betänkande 2016/17:JuU18, p. 84.

also recognize that it could be possible for municipalities to prohibit begging under the Act on Public Order.⁴

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.⁵ While the court's decision was a strict legal assessment of whether the local regulation was compatible with the Act on Public Order,⁶ it must also be viewed as the judiciary's response to the ongoing debate about Sweden's responsibility for destitute EU citizens.

ANTI-BEGGING LAWS - A DEVELOPING TREND

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.⁷ In addition, the leading opposition party, *Moderaterna* (Moderates), has now proposed to criminalise begging and requested the parliament adopt a national prohibition.⁸ The bill will be decided upon in *Riksdagen* on the 13th of May.

4 *Ibid.*, p. 85

5 HFD 2018 ref. 75.

6 Ordningslag (1993:1617).

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

8 Justitiekommitténs betänkande 2019/20:JuU25, Motion 2019/20:3066.



WHERE ARE HUMAN RIGHTS IN ALL OF THIS?

The motives asserted in favor of implementing anti-begging measures can generally be divided in to three categories, or a combination of the three. Firstly, with reference to public order,⁹ secondly, with regard to the risk for people in destitution to be subject to exploitation,¹⁰ 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.¹¹ 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.¹² In that respect, it is problematic that neither the Supreme Administrative Court's decision, nor any of the municipality decisions scrutinized for the purpose of this article, include an impact assessment as to the effectiveness of the asserted aims or a compatibility assessment with regard to human rights.¹³

⁹ See in that regard, Bromölla kommun, 2019-03-19, Tjänsteskrivelse 2019/175.

¹⁰ See in that regard, Motion 2019/20:3066.

¹¹ See in that regard, Eskilstuna kommun, KSKF/2017:386 bilaga B Yrkande 2018-01-30.

¹² The European Roma Rights Centre, Third-party intervention Lacatus v Switzerland, p. 7 – 9. http://www.errc.org/uploads/upload_en/file/third-party-intervention-lacatus-v-switzerland-22-august-2016.pdf

¹³ Regulations from, Bromölla kommun, Katrineholms kommun, Lidingö kommun, Eskilstuna kommun, Danderyd kommun and Kungsbacka kommun.

“If the free movement directive were implemented correctly, there would be better and real opportunities for destitute EU citizens to establish themselves in Sweden, and less EU citizens would be forced to beg.”



THE FREE MOVEMENT DIRECTIVE - A FLAWED TRANSPOSITION

Furthermore, the Swedish application of the EU free movement *acquis* contains major inconsistencies, which limit the possibilities for EU citizens to establish themselves in Sweden. There is a knowledge gap among Swedish agencies on how to assess the right of residence in coherence with EU law.¹⁴ In addition, the notion of “worker” is applied inconsistently at governmental agencies and in administrative courts, in particular by the Tax Agency whose interpretation of the notion of “worker” is incompatible with the CJEU’s case law since it excludes workers with short-term contracts from registering as residents.¹⁵ Similarly, neither the Swedish implementation nor the agencies’ application of the “job-seeker” concept fulfills the criteria as established by the CJEU’s landmark decision in Antonissen.¹⁶

These errors of key free movement legislation undermine the principle of equal treatment and lead destitute EU citizens, who often work in precarious jobs with atypical employment contracts, to experience severe difficulties in accessing the welfare state and claiming their

14 Länsstyrelsen i Stockholm, 2020, Uppdrag om nationell samordning avseende utsatta EU/EES-medborgare som saknar uppehållsrätt i Sverige – SLUTRAPPORT, pp. 16 and 87.

15 Fabrizio Vittoria and Martin Enquist Källgren, Fitness check report for Sweden, 2020, p. 19.
https://www.feantsa.org/public/user/Activities/projects/Prodec/Prodec_Legal_Fitness_Check_Sweden.pdf

16 Ibid., 8.

rights under EU law.¹⁷ In that regard, the deviating implementation of the free movement *acquis* consolidates the destitution of EU citizens who beg in Sweden. On the other hand, if the free movement directive were implemented correctly, there would be better and real opportunities for destitute EU citizens to establish themselves in Sweden, and less EU citizens would be forced to beg.

ANTI-BEGGING LAWS - NOT THE SOLUTION

These aspects make a clear argument for the removal of anti-begging measures at municipal level and for stopping the proposed prohibition on national level. Rather than violating human rights law by banning people from asking for help, the Swedish legislator should focus on its responsibility to ensure free movement rights for EU citizens. This approach would better safeguard EU citizens from the risk of exploitation, provide relevant accountability, and result in fewer EU citizens living in destitution.

17 Ibid., pp. 12 – 19.



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.”



In France, “vagrancy” and “begging” offences were abolished in 1994. The punishment of people experiencing poverty and exclusion, however, is still very much alive today. Begging is a crime under certain conditions, and the law also punishes unauthorised collective occupation of land, occupation of building foyers and unauthorised street trading. This article explores the related judicial procedures and how Civil society has been fighting back.

HOW CAN IT BE THAT “ANTI-POOR” ORDERS STILL EXIST?



By **Noria Derdek**, Research officer, Fondation Abbé Pierre, France

THE FREEDOM TO ROAM – BUT NOT FOR THE POOR

In France, the offences of “vagrancy” and “begging” were abolished in 1994. The punishment of people experiencing poverty and exclusion, however, is still very much alive today.

One aspect of this is that, at the beginning of this century, law makers rushed to create new offences (in particular 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 made, in theory there has to 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.¹

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 (residents or tourists) and local residents. Indeed, the presence of crowds in summer and in tourist towns is cited as a risk factor.

¹ In France, there are two main types of court: the judiciary, that settles disputes between private individuals or opposes the State and private individuals in criminal cases (at its head is the *Cour de cassation*, the highest instance appellate court); and the administrative court that resolves disputes between the State and its citizens or between public entities.



[...] 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.”

WHAT CASE LAW SAYS ABOUT OUR MUNICIPALITIES

An analysis of the case law carried out by Jurislogement (that has largely provided the basis for this article and should soon be updated),² 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 actually 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 July 2019, to reject the motion to urgently suspend the application of the anti-begging order made

² <https://www.jurislogement.org/les-arretes-anti-mendiciteq/>

by the mayor (“petition for suspension”), all the administrative court judge did was to repeat the provisions of the order, as if the order in itself was a justification for its existence.

However, the 191 penalty notice tickets, statements and resident’s 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 (that they were supposed to be justifying). Almost all the extracts from the statements used stereotyped allusions to “homeless³ begging”, without showing that any kind of public disorder or prohibited behaviour had occurred.

The trial record also shows that on several occasions, when the police had been called, they did not detect any begging on arrival, nor

³ Assuming they have no stable residence.



did they detect any disorder in almost all cases. In spite of this, the police always moved people on from the area, which demonstrates a general policy of prohibition of begging in Nice, applied to several zones of the town. Worse still, homeless people are moved on even if they are not begging.

Since the judge overseeing summary proceedings rejected this appeal, we have been waiting for the trial judge's decision, which is still meant to examine the legality of the order. We remain hopeful that this judge will be more discerning.

FIGHTING BACK

It is to bring an end to this laxity that the *Ligue des Droits de l'Homme* (Human rights league) has lodged an appeal with the Council of State, regarding an order made in 2016 by the mayor of Saint-Etienne.⁴ 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.

⁴ 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.

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 has to 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 particular 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.

Clearly, the requirements of the Bordeaux appeals court are preferable to the spectacular 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.



HOUSING INSTEAD OF HANDCUFFS – THE FIGHT AGAINST THE CRIMINALISATION OF HOMELESS PEOPLE IN HUNGARY

In line with the governments increasing use of punitive legislation as a method of social control, Hungary's legal framework on petty offences has become more severe and is now being used to convict homeless people for residing in public spaces – unavoidable for many. The Petty Offences Working Group - a volunteer network of lawyers – is fighting to defend those prosecuted on this ground.



By **Dora Szegő**, Researcher and Program Officer, Hungarian Helsinki Committee, member of the Petty Offences Working Group, Hungary

BACKGROUND

In recent years the legal framework on petty offences in Hungary has become more severe. The Petty Offence Act¹ upheld an extended 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 he/she fails to pay the fine or carry out the work,² which violates the European Convention on Human Rights. 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.³ Changing regulations are part of the governmental trend of using punitive legislation as an instrument of social control. In fact, introducing severe laws against the poor, instead of developing real social policy interventions, only serves to sweep the problems under the carpet. Members of the Petty Offences Working Group, the Hungarian Helsinki Committee, the Hungarian Civil Liberties Union and the Street Lawyers represent the interests of poor and vulnerable people. The present legislation discriminates against them by sanctioning conducts and situations that are intrinsically connected to their social status and livelihoods, including habitual residence of homeless people in public spaces.

1 Act II of 2012 on Petty Offences, the Petty Offence Procedure, and the Petty Offence Registry System

2 Petty Offence Act, Articles 12 and 15.

3 According to the National Penal Statistics, in 2019 from 627458 sentenced cases only 753 ended with community service as an independent sanction. <https://bsr.bm.hu/>

THE WAY TOWARDS CUSTODIAL SENTENCE INSTEAD OF SOCIAL POLICY INTERVENTION

The increasing criminalisation of homelessness in the past decade serves as a great example of the governmental tendency to handle social problems with prohibition or punitive legislation instead of addressing the social habitation crisis with comprehensive social policies. Rough sleeping became a petty offence in 2012 as part of the Petty Offence Act. This was despite an overruling decision by the Constitutional Court⁴ stating that criminalising the status of homelessness is unconstitutional since it violates human dignity; a statement which was accompanied by criticism from the UN Special Rapporteur on extreme poverty and human rights, on the lack of adequate housing conditions in Hungary.⁵ Ignoring that, the Fourth Amendment of the Fundamental Law enabled the Parliament or local governments to criminalise homelessness. Accordingly, in 2013 the Parliament brought back rough sleeping as an offence into the Petty Offence Act, leading to local governments making new decisions about punishing homelessness in their area. An infringement of the 'rules of residing on public premises for habitation' was punishable with community service or a fine.

The last modification of the legal framework was aimed at terminating the visibility of public homelessness and tried to force homeless people into shelters by threatening them with jail. According to the Seventh Amendment of the Fundamental Law, rough sleeping became an unconstitutional act, entering into force on 15 October 2018, which generally prohibited rough sleep in public spaces throughout the whole

4 Decision 38/2012. (XI. 14.)

5 'Hungary's homeless need roofs, not handcuffs' - UN experts on poverty and housing. 15.02. 2012. <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23229&LangID=E>



country. As a result of the latest modification of the Petty Offence Act, a fine cannot be imposed for rough sleeping, only a warning or community service can be served after multiple perpetration. Due to the bad physical and mental health condition of homeless people, community service is most of the time not an alternative for them. In case the person fails or is unable to carry out the community service, the sentence is converted to confinement. If a person is convicted by a court twice in six months, the sentence can only be custody.

In case of multiple perpetration – which is the usual scenario, since people living on the street commit rough sleeping continuously – homeless people are immediately brought to 72-hour detention, implemented in police jails. The custody may last until the final decision, which can take up to several weeks.

After the new regulation came into force there were a few waves of organized police actions by which the Government tried to demonstrate force to cease habitual residence in public spaces. The destructive impact of these measures could be that those living on the streets will be excluded from city centres and will retire to places where social workers lose sight of them, which hinders their visibility and access to social services and increases their vulnerability to social discrimination.

Regarding the fairness of these proceedings, we encountered several cases where the police actions and court procedures against homeless people raised human rights issues, often being humiliating and discriminative. Many times homeless people were taken into 72-hour custody in handcuffs and temporarily deprived of their liberty without a judicial decision. Handcuffs were justified by the police, referring to the 'risk of absconding' due to the lack of habitual residence. The personal dignity of homeless people and their right to be heard in person has been also been violated by their not being allowed to enter the courtroom where their trial was held. In most cases they

were only permitted to follow the trial on a video screen, even when the defence attorney requested a personal hearing for their client, and when their clients were in custody in the same building as the courtroom.

Many judges protested against the regulation by suspending judicial proceedings. Some of them turned to the Constitutional Court with the argument that the applicable law violates the constitutional requirements of rule of law, the right to human dignity and the right to a legal remedy. Their efforts were accompanied by NGOs including the members of the Petty Offences Working Group, former Constitutional Court judges, and the UN Special Rapporteur on housing, who all raised their voice against the criminalising regulation. Despite their united efforts, the Constitutional Court rejected judicial motions for the annulment of legislation criminalising homelessness.⁶ The Government was reinforced to act against the poor in the name of the law.

NOT JUST INHUMANE BUT ALSO INFEASIBLE AND EXPENSIVE

Criminalising homelessness is not only "cruel and incompatible with international human rights law," as the UN Special Rapporteur on housing expressed in an open letter sent to the Government of Hungary,⁷ but it also puts a significant burden on social services, law enforcement agencies and courts, which are not prepared for

⁶ Decision of the Constitutional Court: [http://public.mkab.hu/dev/dontesek.nsf/0/2ba8668e09472db8c1258337004bc40a/\\$FILE/19_2019_ENG_Final.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/2ba8668e09472db8c1258337004bc40a/$FILE/19_2019_ENG_Final.pdf)

⁷ 'Hungary's homeless need roofs, not handcuffs' - UN experts on poverty and housing. 15.02. 2012. https://www.ohchr.org/Documents/Issues/Housing/OL_HUN_4_2018.pdf



Introducing severe laws against the poor, instead of developing real social policy interventions, only serves to sweep the problems under the carpet.”

the reception of crowds of people. That is the most likely reason for the small number of petty offence procedures on rough sleeping in 2019. According to the statistics provided by the Ministry of Interior, 10 judicial procedures were initiated against homeless people for rough sleeping in 2019. There are no reliable statistics for the number of people living on Hungary's streets. According to the estimations of the Habitat for Humanity group,⁸ the number of people affected by homelessness is between 15,000 – 30,000 in Hungary. Another organization that works with homeless people and people in housing poverty, the City is for All,⁹ state that this number approaches 30,000. According to the Ministry of Human Resources, there are around 10,000 places for homeless people to sleep in the whole country, with an extra 1600 places for “crisis situations.” Even if there were enough spaces, there are several, structural obstacles to people using shelter services. Firstly, males and females are separated in shelters. In case of a police measure against a homeless person on the street, police checks for available places in shelters and offer the possibility to go into a shelter. As homeless call center providers claim, a further problem is that it is impossible to provide up-to-date

8 <https://habitat.hu/>

9 <https://avarosmindenkie.blog.hu/>

information for the police, if there is a free place matching the person's conditions. Most of the people who live on the streets have poor health conditions, they often suffer from dependencies or psychiatric illnesses, which excludes them from accessing shelters. Furthermore, homeless people are not usually allowed to bring their pets, which are many times their only belongings.

Commissioned by the Hungarian Helsinki Committee, the Budapest Institute calculated the variable costs of authorities in judicial procedures against homeless people per case, according to the present regulation.¹⁰ The conclusion is that criminalising homelessness costs an unreasonable amount of social resources. The Institute found that the social costs of a whole legal proceeding for rough sleeping range from 144 EUR to 1407 EUR depending on a number of factors, especially upon the severity of the sentence. The former amount would cover the cost of 36 nights in a shelter, the latter amount would cover the housing of a person for a year; facts illustrated in an awareness-raising [animation film](#) by the Hungarian Helsinki Committee.

10 http://budapestinstitute.eu/index.php/projects/datasheet/helsinki_hajlektalansag/en

Legal means to stop the prosecution of the poor have been narrowed since the decision of the Constitutional Court. Led by the Street Lawyers, a volunteer network of lawyers has been set up to defend those who have been brought into court because of habitual residence in public spaces. If there are cases against homeless people with severe sentences, the Petty Offences Working Group will turn to the European Court of Human Rights. The Group also uses social activism to demonstrate the absurdity of the legislation: on the Human Rights Day of 10th December 2019 they coordinated an action in which homeless people sent personal Christmas cards to Constitutional Court Judges telling them how they celebrate Christmas and why they don't use the shelters. This was accompanied by a street demonstration, joined by hundreds of people, to express solidarity with the involved homeless people. So far the Court has not reacted.

The Petty Offences Working Group continues to push for rights-respecting and fair petty offence procedures, using all legal means to stop the prosecution of homeless people and to raise public awareness about the inhumanity and ineffectiveness of the criminalisation of the poor.

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A major U.S. court recently ruled in *Martin v. Boise* that criminally punishing a homeless person for sleeping, sitting or lying down in public in the absence of any alternative violates the U.S. Constitution. This is a major victory in the fight against criminalising homelessness, and for the right to housing. Here is how it happened.

MARTIN V. BOISE: A VICTORY IN FIGHTING THE CRIMINALISATION OF ROUGH-SLEEPING



By **Maria Foscarinis**, Founder and Executive Director, National Law Center on Homelessness & Poverty, USA

ABOUT OUR WORK

The mission of the National Law Center on Homelessness & Poverty is to use the power of law to end and prevent homelessness in the United States. With the support of a large network of pro bono lawyers, and working with a wide range of non-governmental organizations as well as government agencies across the country, we address the immediate and long-term needs of people who are homeless or at risk through outreach and training, advocacy, impact litigation, and public education. We appreciate the work of FEANTSA and all of our colleagues around the world: homelessness is a global crisis and we are all working in solidarity.

A major, current priority at the Law Center is fighting against the criminalisation of homelessness and fighting for the right to housing. In 2016, together with over 100 partner organizations, we launched the Housing Not Handcuffs Campaign to mobilize for that goal; it now has over 1,000 endorsers. The Campaign is staffed by the Law Center; we use a variety of strategies—litigation, legislative advocacy, coalition building, and public education—to carry out its goals. Our litigation strategy to challenge criminalisation of homelessness saw a major victory with the recent court ruling in *Martin v. Boise* that criminally punishing a homeless person for sleeping, sitting or lying down in public in the absence of any alternative violates the U.S. Constitution.

ABOUT THE CASE

On December 16th, the U.S. Supreme Court denied a petition to review *Martin v. Boise*, a case that the Law Center has along with local partner Idaho Legal Aid Services and pro bono partner Latham & Watkins.

By denying the petition, the high Court left in place a ruling from the federal court of appeals for the Ninth Circuit stating that “[a]s long as there is no option of sleeping indoors, the government cannot criminalise indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.” This ruling is binding on the nine states in Circuit--Washington, Oregon, California, Nevada, Idaho, Hawaii, Montana, Arizona, and Alaska—and sets precedent that is persuasive in courts nationally. It’s a victory for everyone fighting against the criminalisation of homelessness and for the basic human rights of our unhoused neighbors.

The Law Center and our partners first took up this case, then known as *Bell v. Boise*, to represent plaintiffs who had been cited by Boise police for violation of Boise’s citywide anti-camping ordinance while sleeping outdoors overnight. Plaintiffs alleged that enforcement of the ordinance criminalising sleeping in public is unconstitutional cruel and unusual punishment, under the 8th Amendment of the U.S. Constitution, when there is no alternative. The case was heard and, in September 2018, was ruled on by the United States Court of Appeals for the Ninth Circuit (the “Ninth Circuit”), sitting as a three-judge panel. The City of Boise petitioned the panel to rehear the case, and the entire court to rehear the case *en banc*¹. The panel declined to rehear the case, and despite some vigorous dissents, the court also declined the request for *en banc* review, allowing the original decision to stand. In a final effort to overturn the ruling, Boise petitioned the Supreme Court to review the case, but the Court denied the request without comment. The ruling now stands as law in the Ninth Circuit and as precedent nationally.

¹ An *en banc* session is a session in which a case is heard before all the judges of a court (before the entire bench) rather than by a panel of judges selected from them.



THE IMPACT OF MARTIN V. BOISE – EXTENDING ITS REACH

The impact of *Martin v. Boise* is far reaching. First, the Law Center is actively working with allied groups to ensure compliance with the decision in cities within the Ninth Circuit, and to extend its reach outside the circuit as persuasive precedent, and this effort is having an impact. For example, In Modesto, California, city officials ceased enforcement of a panhandling ordinance and created a temporary legal camping area while they work to create permanent shelter. In Austin, Texas, the city modified its anti-camping ordinance to require the offer of shelter before enforcement could take place. *Martin* prompted the Los Angeles Homeless Services Authority to issue new guidelines on encampments, for which they turned to the Law Center for consultation. California’s legislature is now considering bills that move beyond a right to shelter, but that encompass a full right to housing.

In Denver, which is in the Tenth Circuit, *Martin* was cited in a successful defense in a case alleging violation of that city’s anti-camping law by a homeless resident. In another case, this time in the Fourth Circuit, *Martin* helped overturn a law criminally punishing “habitual drunkenness,” applied primarily against homeless alcoholics. The Law Center has recently launched a HNH Justice Network of lawyers challenging laws criminalising homelessness, backed up by an online resource bank, to strategize and collaborate; together, we are pursuing additional uses of the precedent within and outside the Ninth Circuit as well as new strategies.

THE IMPACT OF MARTIN V. BOISE – MAKING OURSELVES HEARD

Second, we are promoting media and social media attention, helping to amplify the impact of the ruling. The Law Center tracked more than four hundred mentions of *Martin v. Boise* in national, local and regional news outlets over the past year—including more than 60 articles specifically about the *Martin v. Boise* case—and media interest remains ongoing and high. For example, a single tweet sent by the Law Center on December 16th, when the Supreme Court denied the petition to hear the case, had an astounding 28,966 impressions and over 700 likes, replies, or retweets.

THE IMPACT OF MARTIN V. BOISE – INFLUENCING THE POLITICAL AGENDA ON HOMELESSNESS

Third, the case has impacted election outcomes and high-profile political decisions. In Boise, the case and how the city was addressing homelessness were the top issue in the last mayoral election, and a new mayor, more aligned with constructive approaches to homelessness—as opposed to criminalisation-- prevailed. And at the federal level, the ruling has been cited as a key feature in stopping the Trump Administration’s planned Executive Order on homelessness, which leaks indicated could have included plans for razing homeless encampments and forcibly relocating their residents to internment camps.



By making clear that punishing people for living in public is unconstitutional when no alternatives are available, the court ruling adds a powerful tool for fighting harmful criminalisation. The Ninth Circuit ruling is a landmark legal victory—and it is also a critical opportunity for progress. Ultimately, of course, our goal is not to establish a right to live on the street—it is to establish the human right to housing here in the United States. Striking criminalisation as a response to homelessness is a significant victory, both legal and practical. Now we are working with our allies to capitalize on this success by building support for the human right to housing.

BEYOND MARTIN V. BOISE – KEEPING UP THE FIGHT AGAINST THE CRIMINALISATION OF HOMELESSNESS

At the same time, we continue to fight against laws that criminalise homelessness—to implement the court ruling and to fight efforts by cities to work around it. We are also advocating for a range of

constructive alternatives to criminalisation, recognizing that while permanent housing, recognized as a right, is the true solution, it is likely to take time. Meanwhile, shorter term approaches—such as tiny home villages, low barrier shelter, and legalized encampments—are more constructive than criminalisation, provided they are in the context of an overall plan for permanent housing.

Criminally punishing homeless people for sleeping on the street when they have nowhere else to go is inhumane, ineffective and wastes resources. We are grateful that the Ninth Circuit has recognized that it is also unconstitutional, and set precedent to which other courts can look. But the work is not done yet—not until everyone has a safe, decent, affordable housing.

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The 9th Circuit court’s decision can be read [here](#). The denial of en banc denial review is [here, and the](#) Supreme Court’s denial of review is [here](#).

“By making clear that punishing people for living in public is unconstitutional when no alternatives are available, the court ruling adds a powerful tool for fighting harmful criminalisation.”



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Curated by [Cafe Art London](#).

Artist statement:

“My name is James Gray and I dream in colour. I believe colour has a powerful effect on people, and art is a wonderful tool. Hopefully my art brings joy and happiness into people’s lives”

You can view/buy his artworks at <https://www.cafeart.org.uk/james-gray-1>

About Cafe Art:

Café Art is a social enterprise with a goal of becoming self-sustaining. Café Art aspires to represent a positive approach to a topic that can often be negative. The enterprise brings together artists from almost all of London’s homelessness organisations to showcase their work for the public to enjoy, as well as encouraging and creating an opportunity for them to earn a meaningful income. Café Art is a social enterprise with charitable objectives, with all profits going back into building the business. One of their goals is to help raise further public awareness & empathy towards people affected by homelessness.

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**European Federation of National Organisations
Working with the Homeless**

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