

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.



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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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