

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?



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## 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.<sup>1</sup>

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.

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<sup>1</sup> 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.



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## 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),<sup>2</sup> 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

<sup>2</sup> <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 “homeless<sup>3</sup> 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

<sup>3</sup> 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.<sup>4</sup> 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.

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<sup>4</sup> 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.

